4-498

TRANSCRIPT OF REC[illegible].

SUPREME COURT OF THE UNITED STATES.

No. 255.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, IMPLEADED WITH THE MOUNT VERNON RAILROAD COMPANY, APPELLANTS,

vs.

JOHN W. KENNICOTT, JOSEPH W. WARD, ANDREW H. WARD, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 8, 1874.

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* Stipulation in regard to printing Record, 555 312

1 Pleas in the circuit court of the United States of America, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, and pro tempore sole judge of said circuit court, on the first Monday of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-fifth year.

J. A. JONES, *Clerk.*

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Sergeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges, complainants,

vs.

THE BOARD OF SUPERVISORS OF WAYNE County and the Mt. Vernon Railroad Company, defendants.

} In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

John W. Kennicott, Joseph W. Ward, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Sergeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges, complainants, citizens of the State of Massachusetts, put in their place Messrs. Walter B. Scates, John A. McClernand, Stephen A. Goodwin, Milton Hay, and N. M. Broadwell, their solicitors, against The Board of Supervisors of Wayne County and the Mt. Vernon Railroad Company, corporations located and doing business in the said southern district of Illinois, defendants, who put in their place Messrs. John T. Stuart, A. L. Knapp, Norman L. Freeman, Charles A. Beecher, and Robert P. Hanna, their solicitors, in a bill in chancery to foreclose mortgages.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, heretofore, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and sixty-five, came said complainants, by their solicitors, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois their bill in chancery against said defendants, and deed of trust from the county court of Wayne County to Isaac Seymour, marked "Exhibit B," and made part of said bill; and also, at the same time, filed their bond for costs in said entitled cause; which said bond for costs, bill, and copy of deed of trust are in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit Court, June term, A. D. 1865.

JOHN W. KENNICOTT ET AL.

THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne and Mount Vernon Railroad Company. } In chancery.

Bond for costs.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 7 day of March, 1865.

D. L. PHILLIPS.

(Indorsed:) Filed March 7, A. D. 1865. P. P. Enos, clerk.

Bill in chancery.

To the hon. the judges of the circuit court of the United States, presiding within and for the southern district of Illinois, in the 8th circuit court of the United States.

Your orator', John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Wood, residing in the State of Massachusetts, would respectfully show unto your honors that, by an act of the legislature of the State of Illinois, approved February 15th, 1865, there was incorporated a railroad company by the style of "The Mount Vernon Railroad Company," which said act of incorporation is herewith exhibited as a part of this, your orators', bill, and which company as aforesaid was organized for the purpose of building a railroad from Mount Vernon, Ill., to the Illinois Central Railroad, or its Chicago Branch. And your orators aver that, under the 10th section of said act of incorporation, the said company became and was organized, and exercised and became entitled to all the powers and franchises of a body corporate under said act of the legislature.

Your orators would further show that, under the authority contained in said act, and the acts referred to in said act, the county court of Wayne County, Illinois, having become possessed and entitled to a large amount of swamp land in said county, under and by virtue of the act of Congress of the U. States, passed Sept. 28th, 1850, entitled "An act giving Arkansas and other States swamp and overflowed lands," and also by virtue of an act of the legislature of the State of Illinois, approved Jan. 22*rd*, 1852, appropriating said lands to the several counties in which they were located, the said county of Wayne became entitled to a large amount of said swamp and overflowed lands, more particularly hereinafter described and set forth.

And your orators further state that the said county of Wayne, being a county through which said Mt. Vernon Railroad was to run, was, by the 9th section of said act incorporating said Mt. Vernon Railroad

3 Company, authorized and empowered to aid in the construction of the same, under the provisions of the 7th, 8th, & 9th sections of the said act.

And your orators further aver that, under the authority of and pursuant to the provisions contained in the 8th section of said act incorporating The Mount Vernon Railroad Company, the county court of Wayne County did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether said lands should be mortgaged to aid in constructing said road; that notices of said election was duly given, as pre'cribed by said order providing for said election, and that, at the election so held, a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, which was as follows, to wit: "For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county."

Your orator would further show, upon the faith of said vote, and in pursuance to the power given them by said acts, the county court of Wayne County did, on the 20th day of April, 1859, adopt the proposition having the highest number of votes, which was the said proposition aforesaid, and did order, adjudge, and determine to appropriate the swamp land of Wayne County to aid in constructing the railroad aforesaid, and to execute a mortgage or conveyance in trust, in conformity to such proposition, and did, in pursuance of such order, on said last day, make, execute, and deliver, to one Isaac Seymour, as trustee, two certain indentures, bearing date as aforesaid, conveying in trust the lands therein described, said lands being the swamp lands of said county, for the uses and purposes therein set forth, copies of which are filed, as Exhibets A & B, in this case, and which your orators pray may be taken and considered a part of this, your orators', bill, as fully as if inserted therein.

Your orators further aver that the said Seymour was duly selected, both upon the part of the county of Wayne and the said railroad company, to execute the trust created by said indentures. Your orators would further show that the said railroad company deemed it advisable for the constructing and maintaining their said road to issue, to wit, eight hundred thousand dollars in construction bonds, for the purpose of raising funds for the purposes aforesaid, which said bonds were issued as follows, to wit, four hundred of $500 each; six hundred of $1,000 each, making in all $800,000, as aforesaid; which said bonds are payable in fifteen years from the date thereof, to wit, from the 20th day of April, A. D. 1859, at the Bank of North America, in the city of New York, with seven per cent. per annum interest semi-annually, on the first day of May and November in each year, and for the said interest coupons or warrants for each payment of interest was attached to said bonds, being payable to Isaac Seymour or bearer, said coupons being payable at the place aforesaid.

Your orator' would further show that, for the purpose of giving further security for the payment of said bonds, so issued as aforesaid, the said railroad company did, on the 20th day of April, A. D. 1859, execute and deliver to said Isaac Seymour a deed of mortgage of the said railroad of the said Mount Vernon Railroad Company, constructed, and to be constructed, from the village of Ashley, Washington County,
4 Illinois, to the east boundary of Wayne County, Illinois, in the

said State of Illinois, together with all of its said company's real estate, lands, tenements, and hereditaments, acquired and appropriated for the purposes of a right of way for a single or double track railroad, and all the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, work-shops, superstructures, sections, and fixtures; and also, all and every privilege, franchise, and right of the said railroad company, acquired at the date of said mortgage, or thereafter to be acquired; and also, all the rails, bridges, ways, pens, depots, engines, houses, car-houses, station-houses, warehouses, work-shops, erections, superstructures, fixtures, privileges, franchises, and rights of the said railroad company whatsoever, and wheresoever then owned by said railroad company, or thereafter to be owned by said company; and also, all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinary, and equipments for the railroad of the said company, or which it might thereafter acquire or receive for the purpose of using in connection with the said railroad; and also, all goods and chattels, employed in and about the operation of said railroad, or thereafter to be owned or acquired, in any way relating or appertaining to the said railroad, together with all the titles, rents, issues, incomes, profits, money, rights, benefits, and advantages to be derived, received, or had therefrom (of the said railroad company) in any way whatsoever, and all of which were declared by said mortgage to be appurtenances and fixtures of the said railroad, and to be taken as a part thereof, and to be seperated therefrom, which said mortgage was upon the condition therein more fully shown, a copy of which mortgage is herewith filed, and asked to be made a part of this your orators' bill.

Your orators further allege that the said construction-bonds, referred to in said mortgages, were issued by said railroad company, duly countersigned by said trustee, and were negotiated in the market to raise funds for the construction of said railroad; that your orators several'y become possessed as bona fide holders of the bonds following, to wit:

Your orator John W. Kennicott, of bonds Nos. 14, 15, 34, 212, 252, & 254, of $500 each; and there is now due and unpaid on said bonds twelve semi-ann'al installments of interest.

Your orator Thomas Upham, of bonds Nos. 471, 460, for $1,000 each; Nos. 113, 226, & 234, for $500 each; and there is now due and unpaid on said bonds, $, twelve semi-an'ual installments of interest.

Your orator Ebenezer W. Stone, of bonds No. 353, for the sum of $500; and there is now due and unpaid on said bond twelve installments of semi-an'ual interest.

Your orator Joseph W. Ward, of bonds No's 45 for $500; No. 48 for $500; No. 19 for $500; No. 407 for $1,000; No. 40 for $500; No. 252 for $500; No. 373 for $500; No. 41 for $500; No. 56 for $1,000; No. 351 for $1,000; No. 352 for $1,000; No. 356 for $1,000; No. 357 for $1,000; No. 358 for $1,000; No. 372 for $1,000; No. 402 for $1,000; No. 374 for $500; upon which is now due twelve semi-an'ual installments of interest.

Your orator Joseph W. Ward, the further bonds of No. 386 for $1,000; No. 359 for $1,000; No. 323 for $1,000; No. 268 for $1,000; No. 436 for $1,000; No. 276 for $1,000; No. 409 for $1,000; No. 408 for $1,000; No. 130 for $1,000; No. 59 for $1,000; No. 388 for $1,000; No. 390 for $1,000; No. 395 for $1,000; No. 396 for $1,000; No. 397 for $1,000; No. 404 for $1,000; No. 405 for $1,000; No. 406 for $1,000; No. 363 for $500; No. 369 for $500; No. 366 for $500; No. 365 for $500;

5 No. 279 for $500; No. 280 for $500; No. 364 for $500; No. 363 for $500; No. 281 for $500; No. 282 for $500; No. 362 for $500; No. 361 for $500; No. 400 for 500; No. 360 for 500; No. 359 for $500; No. 358 for $500; No. 355 for $500; No. 253 for $500; No. 230 for $500; No. 43 for $500; No. 93 for $500; No. 267 for $1,000; upon which there is due and unpaid twelve semi-an'ual installments of interest upon coupons thereto attached.

Your orators would further show that a large amount of the interest on the coupons attached to said bonds is due and unpaid, and that demand has been duly made for the payment thereof.

Your orators would further show that neither said railroad company nor said county of Wayne made any provisions for the payment of said interest at the place of payment designated in said coupons; but, upon the contrary, made default; by which said default the condition of the said several deeds of mortgage or conveyance became forfeited and absolute in said trustee for the benefit of your orators and others having, as bona fide holders, any of the bonds issued as aforesaid and upon which interest remains unpaid.

Your orators would further show that, on or about the day of , A. D. 186 , the said Isaac Seymour departed 'his life. Your orators are not informed as to what extent during his life-time the said trustee executed or performed any of the trusts created by said deeds as aforesaid, nor are they informed what has been done between the said trustee and the county court of Wayne County, Illinois, and said railroad company under any of the conditions or provisions contained in said deeds of trust.

Your orators further aver that, by the death of said trustee, said trust has become incapable of execution without the aid of this honorable court in the premises. Now, 'inasmuch, therefore, as your orators are without adequate remedy at law, yours honors are respectfully asked to take cognizance of this your orators' bill, that the said The Board of Supervisors of the County of Wayne, and the said Mount Vernon Railroad Company made parties defendent herein, and that a subpœna in chancery issue against them, and that they be required to answer all and singular the allegations of this bill according to the practice and rule of this honorable court; and that they be required to specifically set forth and disclose a full, ample, and true account of whatever may have been done (if anything) under the deeds and mortgages aforesaid, and that an account may be taken of what may be due your orators on the coupons aforesaid, all your orators bring this bill on behalf of themselves and all other bona-fide holders of any of the bonds issued as aforesaid, who may or proper terms avail themselves of the decree made herein; and your orators ask for such other relief as may seem to your honors just and equitable. And in duty bound your orators will ever pray.

HAY & CULLOM WELDON.

(Indorsed:) Filed March 7th, 1865. P. P. Enos, cl'k.

For Exhibit A, see page 190.
For " B, " " 239.

An afterwards, to wit, on Monday, the first day of May, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

6 *Order of court.*

JOHN W. KENNICOTT ET AL.
v.
THE COUNTY OF WAYNE. } In chancery.

On motion of the complainants' solicitors leave is granted them to amend their bill by changing names of parties.

Then afterwards, to wit, on the sixth day of August of the year last aforesaid, the following further proceedings were had in said court at the August special term thereof in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne et al. } In chancery.

Now come the complainants, by L. Weldon, esq., their solicitor, and now comes also the defendant, by Messrs. Freeman & Beecher, their solicitors; and, on motion of the complainants, by their solicitor, it is ordered by the court that complainants have leave to amend their amended bill herein by the first Monday of October next; and, by agreement of the parties, by their respective solicitors, it is further ordered that the hearing of the demurrer now or to be hereafter filed to said amended bill be set for hearing on the first Monday of December next.

And afterwards, to wit, on the third day of October, in the October chancery term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne et al. } Bill in chancery.

Now come the complainants, by L. Weldon, esq., and Messrs. Hay and Cullum, their solicitors; and, upon their motion, it is *or* ordered by the court that the leave heretofore granted complainants to amend their bill herein be, and is hereby, extended to the first Monday of January next.

Afterwards, to wit, on the twenty-ninth day of March, of the year last aforesaid, came again said complainants, by their said solicitors, and filed in said clerk's office their amended bill, which is in the words and figures following, to wit:

Amended bill.

To the hon. the judges of the circuit court of the United States presiding within and for the southern district of Illinois in the 8th circuit court of the United States.

Your orators, John W. Kennicott, Thomas Upham, Ebenezer W

7 Stone, Joseph W. Ward, residing in the State of Massachusetts, would respectfully show unto your honors that, by an act of legislature of the State of Illinois, approved February 15th, 1855, there was incorporated a railroad company by the style of the "Mount Vernon Railroad Company," which said act of incorporation is herewith exhibited as a part of this your orators' bill, and which company, as aforesaid, was organized for the purpose of building a railroad from Mt. Vernon, Illinois, to the Illinois Central Railroad, or its Chicago Branch. And your orators aver that, under the 10th section of said act of incorporation, the said company became and was organized, and exercised and became entitled to all the powers and franchises of a body corporate under said act of the legislature.

Your orators would further show that, under the authority contained in said act and the act referred to in said act, the county court of Wayne County, Illinois, having become possessed and entitled to a large amount of swamp land in said county, under and by virtue of the act of Congress of the U. States, passed Sept. 28th, 1850, entitled An act giving Arkansas and other States swamp and overflowed lands; and also, by virtue of an act of the legislation of the State of Illinois, approved January 22d, 1852, appropriating said lands to the several counties in which they were located, the said county of Wayne became entitled to a large amount of said swamp and overflowed lands, more particularly hereinafter described and set forth in deed of trust named herein. And your orators further aver that the county of Wayne being a county through which a railroad run, or was projected to run, connecting, joining, and intersecting with the said Mt. Vernon Railroad, and said Mt. Vernon Railroad Company having proposed to build and construct said road, thus intersecting with the Mount Vernon Railroad through the county of Wayne and to Mount Vernon.

And your orators further aver that, under the authority of, and pursuant to, the provisions contained in the 8th section of said act incorporating the Mt. Vernon Railroad Company, the county court of Wayne County did, on the 28th day of September, 1855, at a special term of said court, make an order to hold a special election of the voters of said county on the 5th day of November, 1855, to decide whether the said lands should be appropriated as a bonus to aid in constructing a railroad through said county; that notices of said election were duly given as prescribed by said order providing for said election, and that at the election so held, a majority of all the votes cast at said election (and a majority of all the legal voters of said county of Wayne) was in favor of the proposition so submitted to them, which was as follows, to wit, for appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county upon the faith of said vote, and in pursuance to the power given them by said acts, the county court of Wayne County did, on the 20th day of April, 1859, adopt the proposition having the highest number of votes, which was the said proposition aforesaid, and did order, adjudge, and determine to appropriate the swamp land of Wayne County to aid in constructing the railroad aforesaid, and to execute a mortgage or conveyance in trust in conformity to such proposition; and did, in pursuance to such order, on said last day make, execute, and deliver to one Isaac Seymore, as trustee to certain indentures bearing date as aforesaid, conveying in trust the lands therein, being the swamp lands of said county described, said lands for the uses and purposes therein set forth, copies of

8 which are filed as Exhibits A and B in this case, and which

your orators pray may be taken and considered as a part of this your orators' bill, as fully as if inserted therein.

Your orators further aver that said Seymore was duly selected, both on the part of the county of Wayne and the said railroad company, to execute the trust created by said indentures. Your orators would further show that the said railroad company deemed it advisable for the constructing and maintaining their said road, and the road through said county, to issue, to wit, eight hundred thousand dollars in construction bonds, for the purpose of raising funds for the purposes aforesaid, which said bonds were issued as follows, to wit: Four hundred, of $500 each; six hundred, of $1,000 each; making in all, $800,000 as aforesaid, which said bonds are payable in fifteen years from the date thereof, to wit, from the 20th day of April, A. D. 1859, at the Bank of North America, in the city of New York, with seven per cent. per annum, interest semi-annually, on the first day of May and November, in each year. And for the said interest, coupons or warrants for each payment of interest was attached to said bonds, said bonds being payable to Isaac Seymour, or bearer, said coupons being payable at the place aforesaid.

Your orators would further show, that for the purpose of giving further security for the payment of said bonds so issued as aforesaid, the said railroad company did, on the 20th day of April, A. D. 1859, execute and deliver to said Isaac Seymour a deed of mortgage of the said railroad of the said Mount Vernon Railroad Company, constructed and to be constructed from the village of Ashley, Washington County, Illinois, to the east boundary of Wayne County, Illinois, in the said State of Illinois, together with all of its said company's real estate, lands, tenements, and hereditaments, acquired and appropriated for the purposes of a right of way for a single or double track railroad, and all the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, workshops, superstructures, sections, and fixtures; and also, all and every privilege, franchise, and right of the said railroad company acquired at the date of said mortgage, or thereafter to be acquired; and also, all the rails, bridges, ways, pens, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said railroad company whatsoever and wheresoever then owned by said railroad company; and also, all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinery, and equipments, for the railroad of the said company, or which it might thereafter acquire or receive, for the purpose of using in connection with the said railroad; and also, all goods and chattels employed in and about the operation of said railroad, or thereafter to be owned or acquired, in any way relating or appertaining to the said railroad, together with all the titles, rents, issues, incomes, profits, money, rights, benefits, and advantages, to be derived, received, or had therefrom, of the said railroad company, in any way whatsoever, and all of which were declared by mortgage to be appurtenances and fixtures of the said railroad, and to be taken as a part thereof, and to be separated therefrom, which said mortgage was upon the condition therein more fully shown, a copy of which mortgage is herewith filed and asked to be made a part of this your orators' bill.

Your orators further allege that the said construction bonds referred to in said mortgages were issued by said railroad company, duly countersigned by said trustee, and were negotiated in the mar-
9 ket to raise funds for the construction of said railroad. That your orators severally became possessed as bona-fide holders of the bonds following, to wit:

Your orator John W. Kennicott, of bonds No. 14, 15, 34, 212, 252, and 254, of $500 each; and there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator, Thomas Upham, of bonds Nos. 471, 460, for $1,000 each; Nos. 113, 226, and 234 for $500 each; and there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator, Ebenezer W. Stone, of bonds Nos. 353, for the sum of $500; and there is now due and unpaid on said bond twelve installments of semi-annual interest.

Your orator, Joseph W. Ward, of bonds No. 45 for $500; No. 48 for $500; No. 407 for $1,000; No. 40 for $500; No. 375 for $500; No. 41 for $500; No. 56 for $1,000; No. 351 for $1,000; No. 352 for $1,000; No. 356 for $1,000; No. 357 for $1,000; No. 358 for $1,000; No. 372 for $1,000; No. 402 for $1,000; No. 374 for $500; upon which is now due twelve semi-annual installments of interest.

Your orator, Joseph W. Ward, the further bonds of, No. 386 for $1,000; No. 359 for $1,000; No. 323 for $1,000; No. 268 for $1,000; No. 436 for $1,000; No. 409 for $1,000; No. 408 for $1,000; No. 130 for $1,000; No. 59 for $1,000; No. 276 for $1,000; No. 388 for $1,000; No. 390 for $1,000; No. 395 for $1,000; No. 396 for $1,000; No. 397 for $1,000; No. 404 for $1,000; No. 405 for $1,000; No. 406 for $1,000; No. 368 for $500; No. 369 for $500; No. 279 for $500; No. 280 for $500; No. 366 for $500; No. 365 for 500; No. 281 for 500; No. 282 for $500; No. 364 for $500; No. 363 for $500; No. 362 for $500; No. 361 for $500; No. 400 for $500; No. 360 for $500; No. 359 for 500; No. 358 for $500; No. 355 for $500; No. 253 for $500; No. 230 for $500; No. 43 for $500; No. 93 for $500; No. 19 for $500; No. 251 for $500; No. 267 for $1,000; upon which there is due and unpaid twelve semi-annual installments of interest upon coupons thereto attached.

Your orators would further show that a large amount of intereerst due upon the coupons attached to said bonds is due and unpaid, and that demand has been duly made for the payment thereof.

Your orators would further show that neither said railroad company nor said county of Wayne made any provisions for the payment of said interest at the place of payment designated in said coupons; but, upon the contrary, made default—by which said default the condition of the said several deeds of mortgage or conveyance became forfeited and absolute in said trustee for the benefit of your orators and others having, as bona fide holders, any of the bonds issued as aforesaid, and upon which interest remains unpaid.

Your orators would further show that, on or about the day of , A. D. 186 , the said Isaac Seymore departed this life.

You' orators further aver that the said Isaac Seymour, trustee as aforesaid, failed and neglected to perform all or any of the trusts created by said deeds, and did not pay to your orators by the execution of said trust in any way any of the bonds aforesaid, or any interest thereon as aforesaid, but failed and neglected so to do, nor has the county court aforesaid, nor any person for them, done anything in payment or settlement of said bonds or said interest.

Your orators further aver, that by the death of said trustee, said trust has become incapable of execution without the aid of this honorable court in the premises. Now, inasmuch, therefore, as your orators are without adequate remedy at law, your honours are respectfully asked to take cognizance of this your orators' bill, that The Board of Supervisors of the County of Wayne and the said Mt. Vernon Railroad Company be made parties defendant herein, and that

a subpœna in chancery be made to issue against them, and that they be required to answer all and singular the allegations of this bill according to the practice and rules of this honourable court, and that they be required to specifically set forth and disclose a full, complete, and true account of whatever may have been done (if anything) under the deeds and mortgages aforesaid, and that an account may be taken of what may be due your orators on the coupons aforesaid. And it having been suggested that the said Isaac Seymour is dead, your orators ask the appointment of some competent person to act as trustee in the performance of the trust created by said deeds, exercising the same authority and power as the said Seymour might have exercised under said mortgage in the performance and execution of the trust in said mortgage mentioned, and that he be compelled to execute said trust under the authority and sanction of this court, or in alternative, if it shall appear that your orators are entitled to a decree foreclosing said mortgage or deed of trust, and are entitled to a relief by a direct order for the sale of said lands or any part thereof, that said decree may be rendered; and for such other and further relief as to your honors may seem equitable and just. And your orators bring this bill in behalf of themselves and all other bona-fide holders of any of the bonds issued as aforesaid, who may on proper terms avail themselves of the decree made herein.

HAY AND WELDEN,
Solicitors.

(Endorsed:) Filed M'ch 29, 1866. P. P. Enos, clerk.

And afterwards, to wit, on the first day of October, in the year last aforesaid, came again said complainants, by their said solicitors, and filed in said clerk's office their 2nd amended bill of complaint, which is in the words and figures following, to wit:

2nd amended bill of complaint.

UNITED STATES OF AMERICA,
Southern District of Illinois:

To the honorable the judges of the circuit court of the United States for the southern district of Illinois, in the 8th circuit court of the United States:

Your orators, John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, and Austin Myers, who are citizens of the State of Massachusetts, residing in said State, would respectfully show unto your honors that, heretofore, to wit, the fifteenth day of February, A. D. 1855, the legislature of the State of Illinois, by an act entitled "An act to incorporate the Mount Vernon Railroad Company," approved the said 15th day of February, 1855, enacted that all such persons and corporations as should become stockholders under the provisions of said act and their successors be, and were thereby, created a body politic an' corporate by the name of The Mount Vernon Railroad Company, with all the rights and powers incident and necessary to such corporation, which said act of incorporation is herewith exhibited as a part of the bill of complaint.

11 And your orators further show that, by said act of incorporation, it was provided that, when an amount equal to one thousand dol-

lars per mile of the route of said road was subscribed, the subscribers might meet at Mount Vernon and elect seven directors, and as many more from time to time as may be fixed by law; that, by said act of incorporation, there was created an incorporation by the name and style of The Mount Vernon Railroad Company; that, after the incorporation of the said Mount Vernon Railroad Company by the legislature of the State of Illinois, and before the day of , there was subscribed to the capital stock of said corporation an amount equal to one thousand dollars per mile of the route of said road, to wit, the sum of dollars; that, after the said subscription to the capital stock of said company, as required by said act of incorporation, and as hereinbefore set forth, the subscribers to said capital stock, to wit, on the , met at Mount Vernon, Illinois, and elected a board of seven directors for said company, and also, at the same time there was duly elected a president, secretary, and treasurer of said company, and said company became then and there duly organized, under & by virtue of said act of incorporation; that said railroad company was and is located in the State of Illinois, and is a citizen of said State, and is a body corporate under the laws of Illinois, and was and is entitled to all the powers & franchises of a body corporate under its act of incorporation.

And your orators further show unto your honors that said Mount Vernon Railroad Company, on the 20th day of April, 1859, for the purpose of raising funds from time to time for the construction and completion of its railroad and branches authorized by said act of incorporation, and for the purchase of iron and other materials to be used therein, and for the expenses of the organization and maintenance of the said corporation, and compensation of the officers and agents, trustees, engineers, and other necessary assistants, made and executed six hundred bonds of one thousand dollars each, dated the twentieth day of April, 1859, and each of said bonds was made payable to Isaac Seymour or bearer, which said bonds, and the money thereon to become due, said railroad company promises to pay, on presentation thereof, to the holder thereof, at the Bank of North America, in the city of New York, on the first day of May, 1874, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until said principal sum should be paid, on presentation of the proper interest warrants annexed to said bonds, at the said Bank of North America; and it was provided in each of said six hundred bonds that full payment of the principal and interest of the whole issue of said bonds is secured by a mortgage bearing even date with said bonds to said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the State and county for the purpose of constructing and maintaining said railroad, and also, by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company, *to* which said bonds were duly executed by the president and treasurer of said railroad company, under the corporate seal of said company; to *use* each of which said bonds there was and is attached interest warrants for the semi-annual interest to grow due upon said *lands*, for the sum of thirty-five dollars each, payable the first day of May and November in each year after the date of said bonds to the time when the principal sum mentioned in said bonds be-
12 came due and payable by the terms of each of said bond', and made payable at the Bank of North America, in the city of New York, and were duly signed by the secretary of said company.

And your orators further show that, at the same time of the execu-

tion by said company of the above-mentioned six hundred one thousand dollar bonds, the said Mount Vernon Railroad Company made and executed four hundred bonds, each for the sum of five hundred dollars, payable at the same time and in the same manner and at the same place that the above-mentioned one thousand dollar bonds were; that said last-mentioned bonds were issued for the same purpose & objects that said first-mentioned were issued for, and payable, with interest at the rate of seven per centum per annum, semi-annually, at the Bank of North America, in the city of New York, on the first day of May and November in each year, until the principal sum in said last-mentioned bonds was due and payable; that to each of said last-mentioned bonds there was attached interest warrants for the semi-annual interest due upon said bonds, payable at the same time and place with the interest warrants attached to said one thousand dollar bonds, which last-mentioned coupons were executed by the said secretary of said company; that said one thousand dollar bonds were numbered from one to six hundred, and said five hundred dollar bonds were numbered from one to four hundred; that said last-mentioned bonds were secured by the same mortgage as was provided for the securing of said one thousand dollar bonds, & all of said bonds were for the same object and purpose, and was, in fact, but for one loan for the benefit of said railroad company; that all of said bonds were issued by order of the board of directors of said company at a meeting of said board of directors, duly held at the office of the company for that purpose.

And your orators further show unto the court that, on the same twentieth day of April, 1859, and at the same time of the execution of the said above-mentioned bonds, and for the purpose of securing the payment of said bonds & the interest thereon as the same should become due and payable, according to the terms and conditions of the interest warrants attached to each of said bonds, the said Mount Vernon Railroad Company made, executed, and delivered its certain indenture of mortgage, dated the 20th day of April, 1859, made payable to Isaac Seymour, esquire, cashier of the Bank of North America, at the city of New York, as trustee for the purposes as mentioned in said indenture of mortgage; that said Mount Vernon Railroad Company, in said indenture, was described as the party of the first part, and said Isaac Seymour as party of the second part, in which said indenture it is recited, Whereas the parties of the first part, for the purpose of raising funds from time to time for the construction and completion of the railroad and branches authorized by the provisions of the said act of incorporation, and for the purchase of iron and other materials to be used therein, and for the expenses of the organization and maintanance of the said corporation, and compensation of the officers and agents, trustees, engineers, and other necessary assistants, propose to execute and deliver their construction bonds or obligations in pursuance of the provisions of the act aforesaid, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations in the just and full sum, in the aggregate, of eight hundred thousand dollars, lawful money of the United States of America, secured to be paid by their six hundred construction bonds or obligations of and for one thousand dollars each,
13 and by their four hundred construction bonds or obligations of and for five hundred dollars each, providing for the payment unto said persons, associations, bodies politic or corporate, and their executors, administrators, successors, survivors, and assigns, respectively, of one thousand dollars and five hundred dollars named in said construction-

bonds or obligations respectively, on the first day of March, 1874, and also interest for the same at and after the rate of seven per centum per annum, payable on the first day of every month of March and September ensuing the date of the said construction bonds or obligations until the principal sums and interest named in said construction bonds or obligations respectively shall be severally paid and satisfied in the manner and form in the said construction bonds or obligations set forth and declared, as by reference to said bonds will more fully appear; which said construction bonds or obligations, referred to in said indenture of mortgage, are the same bonds hereinbefore set forth and described in this bill of complaint, and no other. And it is further recited in said indenture that the payme't of said construction bonds or obligations is primarily secured by a mortgage on one hundred thousand acres of land in said county of Wayne, bearing even date of the said indenture executed by said railroad company; that the execution of the mortgage of said lands in Wayne County was by the judges of the county court of said county of Wayne, pursuant to the charter of said Mount Vernon Railroad Company, as provided in said mortgage; that, by the said indenture of mortgage, the said Mount Vernon Railroad Company, under and pursuant to the powers vested in it by the laws of the State of Illinois, and the proceedings thereunder, and also under and pursuant to a resolution of its board of directors, duly made and entered upon the minutes of the proceedings of its said board, for the purpose and with the intent better to secure the payment of the said bonds, with the interest thereon, according to the tenor and effect of the same, and in consideration of one dollar, lawful money of the United States of America, by said party of the second part, (to wit, by the said Isaac Seymour, trustee,) in hand well and truly paid to the said party of the first part at or before the ensealing and delivering of said indenture, the receipt whereof was acknowledged in and by said indenture, granted, bargained, sold, and conveyed, assigned, transfer'ed, and set over, enfeoffed, conveyed, and confirmed, and by said presents did grant, bargain, sell, assign, transfer, and set over, convey, and confirm to the parties of the second part in said indenture named as trustee, and in trust, and to his heirs, executors, administrators, and his or their successors, all and singular, the railroad of the said Mount Vernon Railroad Company, constructed and to be constructed from the village of Ashley, Washington County, to the eastern boundary of Wayne County, in the State of Illinois, together with all its said company' real estate, lands, tenements, hereditaments, acquired and appropriated for the purpose of a right of way for single and double track railroads, and the appurtenances thereof, and for depots, engine-houses, car-houses, station-houses, warehouses, workshops, superstructures, erections, and fixtures; and also, all and every the privileges, franchises, and rights of the said party of the first part acquired at the date of said mortgage, or thereafter to be acquired by it; and also, all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of the said party of the first part in said indenture, wheresoever and whatsoever then owned by the said party of the first part, or thereafter to be owned by it, together with all the locomotives, tenders, baggage, freight, and other cars of or belonging to it, and all other cars, carriages, tools, machinery, and equipments for the railroad of the said party of the first part, or which it may thereafter acquire or secure for the purpose of using in construction with the operation of the said railroad; and also, all goods and chattels employed in and about the operation of said road, then owned

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by the said party of the first , or thereafter to be owned or acquired by it, in any way relating or appertaining to the said railroad, together with all the toll', rents, issues, incomes, profits, moneys, rights, benefits, and advantages to be derived, received, or had therefrom by said party of first part, in any way whatsoever; all of which are declared to be appurtenances and fixtures of said railroad, to be taken as part thereof, and not to be seperated therefrom: To have and to hold the premises, property, rights, privileges, and franchises in said indenture set forth and assigned, or intended so to be, and every part or parcel thereof, with the appurtenances, to the said Isaac Seymour, and his successors, in trust for the person or persons, bodies politic or corporate, who should become holders of said lands or any of them, subject to the terms and stipulations of the said bonds and the several laws and acts of the legislature of the State of Illinois relating to said company; and said indenture was upon the condition and express understanding and provision that if the said corporation, parties of the first part to said indenture, its successors or assigns, shall well and truly pay, or cause to be paid, the sum of money mentioned to be paid in the said bonds, to secure which said mortgage was made, and the interest thereon, at the time and in the manner as respectively mentioned in said bond, according to the true intent and meaning thereof, that the presents mentioned in said indenture, and the estate thereby granted, should cease, determine, and be void; and the said party of the first part in said indenture, in and by said indenture, covenant and agree to well and truly pay the said sums of money mentioned in the said bonds to be paid respectively, together with the interest thereon; and it was in and by said indenture provided that in case default shall be made in the payment of the interest on any of the said bonds, or any part thereof, on any day when the same should have been lawfully demanded, and the same shall remain in arrears sixty days thereafter, or if the default should be made in the payment of the principal of the said construction bonds, and the same cannot be realized from the avails or by a sale of the lands described in a mortgage hereinafter described & set forth, and bearing even date with said indenture executed by said railroad company, it shall and may be lawful, and by said indenture it was provided, that the party of the second part was thereby expressly and fully authorized and empowered to enter upon, and in that case take possession of, all and singular the said railroad and the property and premises thereby in said indenture mortgaged; and through the agency of persons he might from time to time appoint, collect, and receive the tolls, incomes, and profits of said roads thereby conveyed for the purpose of the security of said bonds above set forth; and said trustee thereupon, within such reasonable time as to him should seem proper, not less than sixty days, and upon an advertisement of at least six weeks, to be had in one or more newspapers published in Chicago and Springfield, in the State of Illinois; Indianapolis, in the State of Indiana; and in the city of New York, before the time fixed for such sale, which advertisement should mention
15 the day, hour, and place at which such sale shall be had, and shall proceed to sell at public auction, to the highest bidder, as well the said railroad franchises as all other property and premises thereby granted and conveyed, or intended so to be, and all benefit and equity of redemption of the party of the first part therein whatsoever, with the benefit of the franchises, and subject to the conditions thereof; and it was further provided that the attorney for said company for the purpose, said trustee, his heirs, executors, and

administrators, or their successors, shall have full power and authority to make and deliver to the purchaser or purchasers good and sufficient deed or deeds of conveyance for the road, lands, tenements, and real estate, in fee simple, or otherwise, according to the title or interest of the said company therein, and good and proper conveyance and assignments of the other property thereby granted and assigned; that such sale, so to be made, shall be a perpetual bar, both at law and equity, against the party of the first part, its successors and assignee, and all persons claiming by, from, or under it or them in anywise; that such sale and conveyance, so to be made, shall operate to transfer all the right, title, and interest, reversionary or otherwise, of the said The Mount Vernon Railroad Company in the premises so sold and conveyed; that, out of the monies arising either from the income or profits of the said road, or the sale thereof, after making certain deductions mentioned in said indenture, the same trustee, his heirs, executors, administrators, or successors shall first pay and discharge all costs, charges, counsel fees, and expenses incurred in and about his proceedings in the execution of the trusts of said mortgage, including a reasonable compensation to himself for his services therein; and second, to apply so much of the residue of said monies as may be necessary to pay and discharge in full all the monies due on said bonds, thereby intended to be secured, with the interest thereon then due. That said indenture was duly executed by the president and treasurer of said railroad company, under corporate seal of said company thereto attached, and the execution thereof acknowledged before the clerk of the circuit court of Wayne County, Illinois, on the day of the date of said indenture, and said indenture was afterwards duly recorded as a mortgage in the recorder's office of deeds, of Wayne County, Illinois, the 20 day of April, 1869, and also recorded in the office of recorder of deeds, in the county of Jefferson, the 21 day of April, 1859, and in the office of recorder of deeds for Washington County, Illinois, the 22 day of April, 1859, as will more fully appear by the certificate of the recorder of deeds of the several counties in which said indenture was recorded, a copy of which mortgage, acknowledgement, and certificates of recording the same is hereto attached and made an exhibit, and also part of the bill, the same as tho' copied into the body of the bill. And your orators further show unto this court that, by virtue of the seventh, 8, 9, & 10 sections of an act entitled "An act to incorporate the Mount Vernon Railroad Company," hereinbefore set forth, the said corporation was authorized to borrow such sums of money as it might deem advisable, & upon such terms as it might agree, for the carrying out of the objects of said act, and might provide any security. Also, the county court of Jefferson County, Illinois, were authorized and empowered to subscribe for said amount of the capital stock of said company as they might think proper. Also, they might issue bonds of the county, and provide for the payment of the principal and interest thereof by sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money or otherwise in payment of the subscription aforesaid, upon such terms and in
16 such mode as they should deem or also they might make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they should deem best for the public interest of said county. That, by the ninth section of said act, it was provided that before any disposition should be made of said swamp and overflowed lands, or any subscription to the stock of said company, the county court might, at any regular or special term of said court, order a special election to be held for the

purpose of taking the sense of the qualified voters of the county there upon, giving such notice thereof as they might deem proper, and which should be conducted, and returns made, canvassed, and published in all respects as other county elections; also, the said county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in constructing of said road, which said proposition shall be printed at large as an election ticket; and the voters may express their will in said proposition by yea and nay in said ticket. Those opposed to any and all the propositions or plans may express their dissent by voting "Nay," on a separate ticket. The proposition or plan having the highest number of votes shall be adopted by the county court, provided the majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election. That, by the tenth section of said act, any county through which said road may run, and every county through which any other railroad may run, which said road named in said act may be joined, connected, or intersected, may, and are thereby authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect; and for that purpose the provisions of the 7, 8, & 9th sections of said act, hereinbefore set forth, shall extend, include, and be applicable to every such county, and every such railroad. And your orators further show that, at the time of the passage of such act of the legislature of the State of Illinois, to wit, on the 15 February, 1855, there was then a line of railroad laid out & established in and through the county of Wayne, in the State of Illinois, by the Belleville & Fairfield Railroad Company, a corporation enacted by & duly organized under and by virtue of the laws of Illinois; that said last-mentioned company had previous thereto become fully organized, with all proper & necessary officers, as required by the law under which said company was created. That, afterwards, and about the 30th day of April, A. D. 1855, the said board of directors, and the president of the Mount Vernon Railroad Company, and the board of directors & the president of the Belleville & Fairfield R
Railroad Company, and the secretaries of both of said railroad companys, met at the office of the Mount Vernon Railroad Company, in the town of Mount Vernon, in the county of Jefferson, Illinois, and, by a mutual agreement of the said two railroad companys, and under and by virtue of the laws of the State of Illinois, the said two roads were joined, connected, or intersected; and also, said two roads, by such agreement, were then and there so consolidated as to make but one road running through said counties of Wayne and Jefferson; that by said joinder, connection, or consolidation of said two companies under said agreement, the said companies were organized under the name of the Mount Vernon Railroad Company; and the said board of directors and said companys did, then and there, elect a joint board of directors for said connected, joined, intersected, or consolidated companies, in the place and stead of the several boards of directors of said companies;
17 and also, did then and there elect a president, secretary, and treasurer of said consolidated companies, who entered upon the respective duties of their said offices; that by said joinder, connection, or intersection, or consolidation of said two companies in the manner above set forth under the said name of the Mount Vernon Railroad Company, said last mentioned company, the county court of Wayne County, Illinois, by virtue of the 7, 8, 9, & 10th sections of the act hereinbefore set forth, were authorized to make and execute the mortgage

and deed of trust hereinafter set forth, and to make such disposition of the swamp and overflowed lands in the county of Wayne aforesaid, in aid of the construction and maintenance of the said last-mentioned company's railroad, as they might deem best for the public interest of said county of Wayne.

And your orators further show unto this court that, after the joinder, connection, and intersection, or consolidation of said two ro'ds, as hereinbefore set forth, and before the execution of the said mortgage and deed of trust hereinafter set forth by the county court for said county of Wayne, at a term of said court held at the court-house in the county of Wayne for that purpose, by the judges thereof, did order and dispose of the swamp and overflowed lands in the county of Wayne, then being the property of the county of Wayne, and said lands hereinafter particularly describe', by order and decree that said county court of Wayne County execute and deliver to said last-mentioned railroad company a mortgage and deed of trust of and upon the above-mentioned lands as a security for the payment of the bonds herein above set forth issued by the said Mount Vernon Railroad Company, and to aid by said lands and the mortgage and trust deed said railroad to construct and maintain said railroad, and by such mortgage and deed of trust to pledge and mortgage said lands for the payment of said beforementioned bonds, & to the extent and value of said lands to assume the payment of said bonds.

And your orators further show that, before any disposition was made by said county court of Wayne County of the swamp and overflowed lands in Wayne County, belonging to said Wayne County, Illinois, at a special term of said county court of the county of Wayne, held on the 28th day of September, 1855, an order was duly made and entered by said court, whereby a special election was ordered and directed to be held on the 5th day of November, 1855, for the purpose of taking the sense of the qualified voters of the county of Wayne upon the mortgaging of that portion of the overflowed and swamp lands, or to donate said lands as a bonus, in the said county & hereafter described, for the purpose of aiding in the construction and maintenance of the said The Mount Vernon Railroad; and the said county court did then and there order public notice of such special election to be given by advertisement, in accordance with the statute laws of the State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did then and there prepare a proposition containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said proposition to be duly printed at large as an election ticket, and furnished the same to the qualified voters of county, to be used at such election, in the words and figures following, to wit: For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county against the same.

That, in pursuance of said order and notice, a special election of
18 the qualified voters of said county was duly held on the said 5th day of November, 1855, and conducted in all things in conformity to the provisions of said act incorporating said railroad company and the laws of the State of Illinois, and the returns of such election made, canvassed, and published in all respects as other county elections are required to be in and by said laws. That, at said election, the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by

casting and voting "Yea" upon the said several printed propositions or tickets cast by said voters at the said election. That afterwards, and on or about the 20 day of April, 1859, in open court, at a term of said county court of Wayne County, upon the returns of said special election being duly made, canvassed, and published as required by law, the said county court of the county of Wayne did adopt the proposition or plan having the highest number of votes, as above set forth, and did order, adjudge, and determine to execute a mortgage upon the swamp and overflowed lands of the county of Wayne to Isaac Seymour, trustee, for the benefit of the Mount Vernon Railroad Company, joined, connected, intersected, or consolidated, as before mentioned, in conformity to said proposition or plan, and according to the provisions and terms of the said mortgage hereinafter set forth and described, for the purpose of aiding in the construction and maintain'g the said Mount Vernon Railroad.

And your orators further show unto the court that the said bonds hereinafter described, to the amount of eight hundred thousand dollars, and the said first-above described mortgage, was executed and delivered by the said The Mount Vernon Railroad Company, after the joinder, connection, intersection, or consolidation of said two companies hereinbefore set , and said lands were the bonds of said joined, connected, or consolidated companies.

And your orators further show unto this court that the lands mortgaged to said railroad by the county of Wayne, as hereinafter set forth and described, were lands appropriated to the county of Wayne, Illinois, by an act of the legislature of the State of Illinois, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," approved the 22d June, 1852.

And your orators further show unto this court that the county court of Wayne County, Illinois, on or about the 20th day of April, 1859, by virtue of the law of the State of Illinois, and the order and determination of said county *county* court, and to carry out the plan or proposition submitted to the qualified voters of said Wayne County, as before set forth and assented to*o* by a majority of all the voters of said Wayne County, became endowed with the requisite power, and as thereby, to dispose and mortgage the swamp and overflowed lands of Wayne County to the Mount Vernon Railroad Company, joined, connected, and intersected or consolidated as aforesaid, for the purpose of aiding the construction and maintenance of said last-mentioned company's railroad; and the said county court having also determined and adjudged it best for the public int*rust* of the said county of Wayne that the lands hereinafter described, being the swamp and overflowed lands of said Wayne County, should be conveyed in trust to Isaac Seymour, of New York, for the uses, purposes, and benefits as set forth in said mortgage hereinafter set forth, upon the terms and conditions set forth in said mortgage.

And your orators further show unto the court that afterwards, to wit, on or about the 20th day of April, 1859, the said county court
19 of Wayne County, Illinois, *by virtue of the* by the judge of the said county court, to wit, Samuel J. R. Willson, judge, and Thomas M. Scott, associate judge of the county court of Wayne County, Illinois, by virtue of the power and authority given them and said county court by the laws of the State of Illinois and the said vote of the qualified voters of said Wayne County, as above set forth, and to carry into effect the order and determination of said county court, and above set forth, in respect to the swamp and overflowed lands of

Wayne County, and also for the purpose of donating the said swamp and overflowed lands to the Mount Vernon Railroad to aid in its construction and maintenance, as before set forth; and also for the purpose of securing and for the payment of the said bonds, heretofore set forth and described, executed by the said Mount Vernon Railroad Company, joined, connected, intersected, or consolidated in the manner as before stated, and to donate and dispose of said swamp and overflowed land to the last-mentioned railroad company for the purposes aforesaid, they, the said county court of Wayne County, in the manner and form as hereinafter described in an indenture of mortgage, did, under the hands and seals of said judges of said county court and the official seal of said court on the day and year last aforesaid, and for the purposes aforesaid, make, execute, and deliver to Isaac Seymour, of the city of New York, as trustee, an indenture of mortgage upon the swamp and overflowed lands of Wayne County, which lands so mortgaged or donated by virtue of said mortgage is in said indenture of mortgage particularly described and set forth, a copy of which indenture of mortgage is hereunto annexed, and which your orators pray may be taken and made part of this bill of their complaint. That, in and by said indenture of mortgage, said lands described in said mortgage, amounting, in the aggregate, to one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred acres pre empted, were, by said county court, donated, granted, bargained, sold, remised, released, conveyed, and confirmed unto said Isaac Seymour, in trust for the first securing the payment of all the bonds and interest thereon as provided in and by said bonds, as said interest should become due and payable, and to enable said trustee to raise money by the sale of said bonds and said interest provided for in said bonds, and to enable said trustee to pay said the principal of said bonds when it should become due in aid of the construction and maintaining aforesaid railroad, and for the use and benefit of said Mount Vernon Railroad Company, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances, thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law and in equity, of the said county court and said county of Wayne, of, in, and to the same, each and every part and parcel thereof, with the appurtenances; that it was provided in said last-mentioned mortgage that, all and singular, the lands and tenements granted by said indenture, & each and every parcel thereof, be held by said trustee and his successors as joint tenants, & not tenants in common, for the uses and purposes set forth in said indenture; and also, that said lands be sold and conveyed in payment of the interest upon said bonds as the same became due, and the principal of the same when it became due, and for such other purposes as is described and set forth in said indenture; that, by said indenture, all the estate of said county court of the county of Wayne, and said Wayne
20 County, in the said lands and tenements set forth in said indenture was donated and conveyed as aforesaid, subject, however, to any and all equitys, said county court, Wayne County, and said last-mentioned railroad company, may have in the same; that said mortgage was duly acknowledged by the said judge of the county court, before clerk of said court, the 20 April, 1859, and certified thereto by said clerk, under seal of said court, and such acknowledgments *and* certified to on the said indenture, and said indenture duly recorded in the office of recorder of deeds of Wayne County, 6 day of , 1859, in book of

mortgages B, on pages 341 to 358, inclusive, by the clerk of the circuit court of said Wayne County.

And your orators further show unto the court that said Mount Vernon Railroad Company, after its joinder, connection, intersection, or consolidation as aforesaid, laid out the line of railroad from the town of Ashley, in Washington County, Illinois, to the town of Mount Vernon, in the county of Jefferson, did purchase and did acquire the title to lands & real estate, in width one hundred feet, and lands for turnouts, switches, and depot-buildings from said town of Ashley to Mount Vernon. A particular description of said lands for said line of railway, turnouts, switches, and depots is given in an exhibit hereto annexed and made part of this bill.

And your orators further show that, after the execution of the said bonds, here inbefore set forth, and after the execution and delivery of said mortgage by the said Mount Vernon Railroad Company, and after the execution of said indenture by the said county court of Wayne County, in the form & manner before set forth, the said trustee named in the said mortgages & the said Mount Vernon Railroad Company sold a large amount of said bonds, for a valid consideration paid therefor by various parties the purchasers of the same; that from said original purchasers of said bonds, your orator John W. Kennicott became the bona-fide owner and holder of the following bonds for the sum of five hundred dollars with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, and 254; and there is now due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Thomas Upham is the bona-fide owner and holder of said bonds for one thousand dollars each, numbered 471, 460, & bonds for five hundred dollars each, numbered 113, 226, & 234; and that there is now due and unpaid on said bonds twelve semi-annual installments of interest.

You orator Ebenezer W. Stone is the bona owner and holder of the said bonds numbered 353, for the sum of five hundred dollars; and there is due and unpaid on said bonds twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the bona-fide owner and holder of the following-numbered bonds, for $500 each, No'. 45, 48, 40, 4, 373, 374; and, for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358, and 402, No'. 279, 280, 281, 282, 400; and there is due and unpaid upon said bonds twelve semi-annual installments of interest.

Your orator Austin Myers is the bona-fide owner and holder of the following-numbered bonds, for the sums set to said numbers: 169 for $1,000; No. 91 for $1,000; No. 92 for 1,000; No. 93 for $1,000; No. 94 for $1,000; No. 95 for $1,000; No. 96 for $1,000; No. 276 for $1,000; Nos. 97 for $1,000; 98 for $1,000; 99 for $1,000; 100 for $1,000. Bonds numbered from 152 to 174, inclusive, of $1,000 each; also bonds
21 numbered from 221 to 250, inclusive, for $1,000 each; on which bonds there is now due and unpaid twelve semi-annual installments of interest.

Your orator Joseph W. Ward is the further owner and bona fide holder of the following bonds for one thousand dollars each, to wit, numbered 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406, 407, and 56; and bonds for $500 each, numbered 368, 366, 364, 362, 360, 358, 253, 43, 369, 365, 363, 361, 359; No. 19, No. 251, 355, 230, 93, and No. 267, for one thousand dollars; that there is now due and unpaid twelve semi-annual installments of interest on each of said bonds; that there is now due a large amount of interest upon the coupons or interest warrants attached to each of the bonds held by your orators, and demand has been made for the payment of said interest.

And your orators would further show that, *with* the said railroad company, *now* said county of Wayne, or any persons for them, have made, or propose to make, any provisions for the payment of the interest due upon said bonds, or any part thereof, either at the place appointed in said bonds for the payment thereof, or at any other place; but, on the contrary thereof, have made defult—by which default the conditions in each of the said indentures have become forfeited and absolute in said trustee or his successors in said trust for the benefit of your orators, & all others having and being the bona fide owners of said bonds.

And your orators further show that the moneys & considerations paid in the purchase of said bonds from said trustee and said company was to aid said railroad in its construction and maintenance; that your orators are informed that the whole amount of said bonds first above set forth have been sold by said trustee & railroad company, but your orators are ignorant, and do not know to whom said bonds were originally sold, or who are the present holders thereof. But your orators pray that any party or parties being holders and owners of any of said bonds may be permitted to be made parties complainants in this bill, upon such terms as to this court shall be just and equitable, and upon a proper application to this court for that purpose, & that when so made parties they have such relief as shall be equitable in the premises.

And your orators further show that, on or about the day of , A. D. 186 , (the precise time is unknown to your orator',) the said Isaac Seymour, the trustee named in said deeds or mortgages, departed this life; that said Isaac Seymour, as trustee in said indenture, failed and neglected to perform all or any part of the trusts created by said deeds, and did not pay to your orators, by the execution of his trust, or in any other way, any of the bonds aforesaid, or any part of the interest due and unpaid thereon, but neglected so to do; nor has the said county of Wayne, or any person there for them, paid any part of said bonds, or the interest due and unpaid thereon.

Your orators further show unto this court that, by the death of said trustee, the trust created by said indenture has incapable of execution without the aid of the court in the premises.

Now, therefore, as your orators are *remindedless* at and by the strict rules of common law, and can only have the proper relief in a court of equity, your orators ask that this court would take cognizance of the bill, and that the board of supervisors of Wayne County and the said Mount Vernon Railroad Company be made parties defendants in this bill; and that a subpœna in chancery be issued out of this court, directed to said defendants, & that they be required to answer all and singular the allegations of this bill, according to the rules
22 and practice of this court; and that they be specifically required to set forth and disclose a full and true account of whatever may have been done under the said indenture, and that an account may be taken of what may be due your orators upon the coupons or interest warrants aforesaid; that some proper and competent person be appointed to act as trustee in the performance of the trust created by said indentures, to exercise the same authority and power as said Seymour might have exercised under said indentures in the performance and execution of the trust in said indentures mentioned; and that he be compelled to execute said trusts under the authority and order of the *of the* court, or if it shall appear that your orators are entitled to a decree foreclosing said mortgages or deeds of trust, and are entitled to relief by a direct order for the sale of said lands mentioned in said

indenture executed by the said county court of the county of Wayne, & a sale of the property and franchises set forth and described in said indenture, executed by said Mount Vernon Railroad Company, that such sale be ordered and decreed, or that your orators may have such other and further relief as may seem to *to* your honor just and equitable in the premises; and your orators bring this bill in behalf of themselves and all other bona fide holders of any of the bonds issued as aforesaid and described in said indenture, who may in proper terms avail themselves of the decree made in this court.

HAY & WELDON,
Sol'rs for Comp'ts.

(Indorsed:) Filed Oct. 1st, 1866. P. P. Enos, cl'k.

Then, afterwards, to wit, on the twenty-second day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF WAYNE County, impleaded with the Mt. Vernon R. R. Co. } In chancery.

On this day come again the complainants, by their solicitors, and, on their motion, the defendants are ruled to answer herein by the first Monday of April next, and cause continued.

And afterwards, to wit, on the 12th day of June, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } In chancery.

Now come as well the complainants, by Messrs. Hay and Wel-
23 don, their solicitors, as the said defendants, by Messrs. Freeman and Herndon, their solicitors; and, on motion of the defendants, time to answer is extended to the first Monday in July next.

Now, afterwards, to wit, on the first day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT AND OTHERS
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, impleaded, &c. } In chancery.

Now, on this day, came again the parties, by their solicitors, and, on motion, the complainants have leave to file an amended bill by first day of August next; and the rule on said defendants to answer extended to the first day of October next; and this cause is continued.

Afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and seventy, came said complainants, by their said solicitors, and filed in said clerk's office their amendment to bill, which said third amendment to bill is in the words and figures following, to wit:

3rd amended bill.

In the circuit court.

UNITED STATES OF AMERICA,
Southern District of Illinois:

To the hon. judges of the circuit court of the United States for the southern district of Illinois.

Page 1, line 8. Line 10. Your orators, John Kennicutt, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, Austin Myers, John H. Brown and Cyrus Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, and Joseph Burnett, who are citizens of the State of Massachusetts; Morris J. Earle, who is a citizen of the State of New Jersey; William L. Rolston, who is a citizen of the State of Ohio; and William R. Hodges, who is an alien and subject of her Majesty Victoria, Queen of Great Britain and Ireland, would respectfully represent unto your honors, that, on the 15th day February, A. D. 1855, the legislature of the State of Illinois, by an act entitled "An act to incorporate the Mount Vernon Railroad Company," approved on said day, enacted that all persons who should become stockholders under the provisions of said act, and their successors, became and were thereby created a body corporate and politic by the name of the Mount Vernon Railroad Company, with all the rights and powers incident and *and* necessary to such corporation. That, by the further terms of said act, it was provided that when an amount equal to one thousand dollars per mile of the rout' of said road should be sub-
24 scribed to the capital stock of said company, such subscribers might meet at Mount Vernon and elect seven directors, and as many more from time to time as might be fixed by law.

And orators, by leave, refer to said act, and pray that the same be taken as a part of this amended bill of complaint.

Orators further show to your honors that, under authority of said act, an amount exceeding one thousand dollars per mile of the rout' of said road was duly subscribed (being more than one thousand dollars per mile for the whole length of said road) to the capital stock of said company; and the said body corporate was fully organized under said law, and president, secretary, treasurer, and board of directors were duly elected by the subscribers to said capital stock. That said corporate body was organized under the laws of the State of Illinois, and was and is located in Illinois, and is a citizens thereof.

Orators further show that said body corporate was created for the purpose of constructing and operating a railroad from Mount Vernon, in Jefferson County, in said State, to the Illinois Central Railroad, or the Chicago Branch thereof, in said State. That by the terms of the 7th section of said act, said company was permitted and empowered to borrow such sums of money as it might deem desirable, upon such terms as it might agree, for the carrying out of the objects of said act, and

provide any securities said company might deem best, by bond, mortgage, or otherwise; that, by the terms of the 8th section of said act, the county court of said county of Jefferson was empowered to subscribe for such amount of the capital stock of said company as they might think proper, to issue bonds of said county and provide for the payment of the principal and interest thereof, by sale or mortgage, one or both, of the swamp and overflowed lands of said county, and dispose of such bonds for money to pay, or in payment of, their subscription to said stock, all and each to be upon such terms, time, and in such mode as they might think best; or they might make such other dispositions of said swamp and overflowed lands in aid of the construction and maintenance of said road as they might deem best for the public interest of said county; that, by the 8th section of said act, it is provided that "Before any disposition is made of said swamp and overflowed lands, or any subscription to the stock of said company, the county court may, at any regular term of said court, order a special election to be held for the purpose of taking sense of the qualified voters thereupon, giving such notice thereof as they may deem proper, and which shall be conducted and the returns thereof canvassed in all respects as other county elections. The county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, distinct idea of the plan or plans proposed by them for aiding in the constructing of said road, which said proposition shall be printed as an election ticket, and the voters may express their will in said proposition by writing 'yea' & 'nay' in said ticket. Those opposed to any and all propositions or plans may express their dissent by voting 'nay' on a separate ticket. The proposition or plan having the highest number of voters shall be adopted by the county court, provided a majority of all the votes given in favor of the several propositions or plans, so submitted in aid of said road, shall be a majority of all the votes given at said election." That, by section 10 of said act, it is further provided that any county through which said road may run, and any county through which any of the railroad' may run with which this road may be joined, connected, or intersected, may, and are hereby, authorized and empowered to aid in the construction of the same, or such other road with which it may so connect; and for this purpose the provisions of the 7th, 8th, & 9th sections of this act shall extend, include, and be applicable to every such county & every such railroad.

Orators further show unto your honors that, by virtue of a certain other act passed by the general assembly of the State of Illinois, approved February 15th, 1855, entitled "An act to incorporate the Bell'ville & Fairfield Railroad Company," a certain other body corporate and politic was created for the purpose of constructing and maintaining a railroad from Belleville, in the county of St. Clair, in said State, and running from thence by Nashville, in Washington County, and Mount Vernon, in Jefferson County, to Fairfield, in Wayne County, in said State. That, under said act of incorporation, said company was afterwards fully organized, and a president, secretary, and board of directors were duly elected. And orators beg to refer to said act, and that the same be taken as a part of this bill. And orators further show that, about the 19th day of November, A. D. 1855, a certain firm composed of Isaac T. Vanduser, Norman L. Smith, and Samuel L. Voorhees, doing business under the name of Vanduser & Smith, entered into a contract in writing with the county court of said Wayne County, (such contract being executed as and for said county court by S. J. R. Wilson, county judge, and Thomas M. Scott, associate judge of said county.) That, by the terms of said contract, said Vanduser & Smith agreed and undertook, on cer-

tain terms and conditions in said written instrument specified, to construct and put into operation a railroad from Mount Vernon aforesaid to the eastern boundary of Wayne County aforesaid, terminating on the old survey of the Alton, Mount Carmel & New Albany Railroad, or within one mile thereof. That, by the further terms of said agreement, said county judge and associate judge, acting for and on behalf of said Wayne County, agreed to pay to said Vanduser, Smith & Co., for construction of said road, certain sums of money, which might be liquidated by the conveyance of certain lands belonging to the county of Wayne, at the rate of five dollars per acre.

And orators show that said contract was duly approved by said county court, at a special term thereof held in the month of December, A. D. 1858. And orators file herewith a copy of said written agreement, marked "Exhibit A," and pray that the same may be taken as a part of this bill. And orators further show that, about the time of the execution of said agreement, said Vanduser, Smith & Co. entered into an agreement with the Mount Vernon Railroad Company for the construction by said firm of the whole or some part of the said Mount Vernon Railroad; that said Vanduser, Smith & Co. entered upon the construction of said railroad, agreed to be built by said firm with the said county court, but afterward ceased to prosecute said work, and assigned and transferred to said Mount Vernon Railroad Company the said written contract with the county court of Wayne County aforesaid. That said Mount Vernon Railroad Company, in pursuance of a resolution passed by the board of directors, obtained from said Vanduser, Smith & Co. an assignment of both said contracts for construction, to wit, one with the said county court of Wayne County, and one with said Mount Vernon Railroad Company. And orators further show that before the 20th day of April, A. D. 1859, that portion of the said Belleville and Fairfield Railroad lying between Mount Vernon and the east line of Wayne County was surveyed and located, and the said Mount Vernon Railroad was also surveyed and located from Mount Vernon westward to the Illinois
26 Central Railroad; that the line of said Mount Vernon Railroad, as surveyed and located, connected and intersected with the line of the Belleville and Fairfield Railroad as located, to wit, at Mount Vernon, and at said last-named place said roads became links in a chain of Railroad connection, as contemplated and provided for in the charter of said Mount Vernon Railroad Company. And orators further show that, after the organization of said two railroad companies, under the charters aforesaid, to wit, about the month of April, A. D. 1855, the presidents and boards of directors of both companies met at the office of the Mount Vernon Company, in Mount Vernon aforesaid, and by a mutual agreement of both companies, under and by virtue of the laws of the State of Illinois, the said roads were joined, connected, & intersected; and said roads were, by said agreements, so joined, connected, and intersected as to form one road from the east line of Wayne County to Mount Vernon aforesaid; that, by said agreement, both of said roads were joined, and said companies consolidated under the name of Mount Vernon Railroad Company; and said boards of directors and said companies did then and there elect a joint board of directors, and president, secretary, & treasurer, for said consolidated companies.

Orators further show unto your honors that, by reason of the connection and intersection of said Mount Vernon Railroad, and said Belleville & Fairfield Railroads, as originally chartered, and as surveyed and located; and also, by reason of the consolidation of said companies as aforesaid, the said county court of Wayne County, in the year A. D.

1855, acquired all the rights, powers, and privileges granted and specified in the 7th, 8th, 9th, & 10th sections of the charter of the Mount Vernon Railroad Company aforesaid, and had the right to aid in the construction of both or either of said roads, and to dispose of the swamp and overflowed lands of Wayne County for that purpose, subject to the conditions and limitations of said sections; and by virtue of the power specified in said sections, said county court, in said year A. D. 1855, became and was authorized to pledge or mortgage the said swamp lands of said county to aid in the construction of either of said roads, by complying with certain conditions set forth in said Mount Vernon Railroad charter.

And your orators further show that said county, being desirous of aiding in the construction of a railroad across said county of Wayne, and said consolidated companies contemplating the immediate construction of each road, and said county being then the owner of a large quantity of lands granted to said county by the State of Illinois, and to said State by the United States, and known as swamp and overflowed lands, by an order made and entered at a special term of said court, held on the 28th day of September, A. D. 1855, at Fairfield, in said county, directed a special election to be held in said county of Wayne, on the 5th day of November, A. D. 1855, for the purpose of taking the sense of the qualified voters of said county upon mortgaging or appropriating that portion of the swamp & overflowed lands situated in said county, and hereinafter described, to any company that would build a railroad through said county of Wayne; and the said county court did then and there order public notice of such special election to be given by advertisement, in accordance with the statute laws of said State of Illinois, and said notice was given in conformity with the terms and provisions of said order; and the said county court did prepare a proposition containing a brief, clear, and distinct idea of the plan proposed for aiding in constructing said road; and did cause the said proposition to be printed at large, as an election
27 ticket, and furnished to the qualified voters of said county, to be used at said election, in the words and figures following, to wit: "For appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county." "Against the same." And said special election was duly held pursuant to said notice, on the 5th day of November, A. D. 1855, and conducted in all things in conformity with the provisions of the aforesaid charter of the Mount Vernon Railroad Company and the laws of the State of Illinois, and the returns thereof made, canvassed, & published in all respects as other county elections are to be in and by said laws. Orators further show that said proposition or plan above stated received the highest number of votes and a majority of all the votes given at said election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" in favor of said proposition so to appropriate said lands; and upon the returns of said election being duly canvassed and published, the said county court did adopt the plan or proposition carried as aforesaid, and did adjudge and determine to execute a mortgage upon said swamp and overflowed lands for the purpose aforesaid. And orators further show unto your honors that, on the 20th day of April, A. D. 1859, said Mount Vernon Railroad Company, for the purpose of raising money to build and complete said railroad and branches, authorized by said act of incorporation, and for the purpose of purchasing iron and materials, and the payment of the expenses thereof, made and executed six hundred bonds, of one thousand dollars each, and four hundred bonds of five hundred dollars each,

all made payable to Isaac Seymour, or bearer, payable at the Bank of North America, at New York City, on the first day of May, A. D 1874, with interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of May and November of each year. until said principal should be paid; and that each of the said bonds had attached thereto coupons or interest warrants covering the whole amount of interest to become due till the maturity of said bonds, payable at the Bank of North America aforesaid, each of said coupons or warrants specifying the interest for one-half year on the bond to which it was attached, and also the time when such half-yearly interest would become due and payable. That each of said bonds was duly executed by the president and treasurer of the said Mount Vernon Railroad Company, and the seal of said body corporate attached thereto, and each of said interest warrants so attached to said bonds was signed by the secretary of said company; that it was specified on the face of each of said bonds that full payment of the principal and interest of the whole issue of said bonds was secured by a mortgage, bearing even date with said bonds, to the said Isaac Seymour, as trustee, of one hundred thousand acres of land in Wayne County, in the State of Illinois, granted by the State and county, for the purpose of constructing said railroad; that said one thousand-dollar bonds were numbered from one to six hundred, both inclusive, and said five hundred dollar bonds were numbered from one to four hundred, both inclusive; and all said bonds were issued under a resolution passed by the board of directors of said Mount Vernon Railroad Company on the first day of March, A. D. 1859.

And orators further show unto your honors that the county court of Wayne County aforesaid, being desirous of aiding in the construction of a railroad running through said county, and said county being the owner of a large quantity of swamp and overflowed lands, (donated thereto by the State of Illinois as aforesaid,) resolved to mortgage
28 and pledge the same to secure the payment of the principal and interest of the bonds aforesaid; that, on the 20th day of April, A. D. 1859, said county court had full authority in law so to dispose of said lands, such authority being derived from the following separate sources, to wit:

First. From the general public laws of the State of Illinois then in full force.

Second. From the 7th, 8th, 9th, & 10th sections of the aforesaid act incorporating the Mount Vernon Railroad Company aforesaid, and the connection and intersection of said road as surveyed and located with the Belleville and Fairfield Railroad as surveyed and located.

Third. From the consolidation and union of the said two railroads aforesaid, as hereinbefore stated. And, so being possessed of full authority in the premises, the county judge and one of the associate judges of the county of Warren did, on the 20th day of April, A. D. 1859, execute and deliver to the said Isaac Seymour a certain deed of trust and a certain mortgage to said Seymour, copies of which said deed of trust and mortgage are filed with the original bill in this cause, and prayed to be taken as a part of this amended bill; that said deed and mortgage were, in fact, made for the purpose of securing the payment of the principal and interest specified in said bonds and interest warrants aforesaid; and that said deed of trust and mortgage were so executed by said county judge and associate judge on behalf of said county, and by virtue of the lawful authority of said county court so to dispose of said swamp and overflowed lands. Show that a special term of said county court, held in said month of April, A. D. 1859, that said mortgage and

trust deeds were fully approved by said court, and became, and were, and are, in equity the deed of said Wayne County, and the same were duly acknowledged and filed for record in the office of the circuit clerk and recorder of said county, on the 3d day May, A. D. 1859, and are duly recorded in said office; and said respondents, all and each, every of them, are required to answer upon oath, specifically, to the best of their knowledge, information, and belief, whether said instrument *were* executed, and approved, and recorded, as aforesaid, and whether the said copies thereof, filed as exhibits herein, as aforesaid, are true and perfect copies of the same.

Show that said bonds being so executed, your orators became, severally, purchasers of a number of the same and of said interest warrants as set forth hereinafter in good faith, and for a good and valuable consideration, relying upon the security aforesaid; that neither said sums of money specified in said bonds, nor the sums specified in said warrants, or any part thereof, have been paid, but that before the commencement of this suit a sum greater than one year's interest on all the bonds, issued as aforesaid, had become due and payable, and still remains wholly due and unpaid.

Orators further charge, upon information and belief, that all bonds aforesaid have long since been disposed of by said Seymour or said company, but orators do not know, and have no means of knowing, who are the holders or owners of any of said bonds except those held by orators; and orators pray that the holders of said bonds, or any of them, not joined in this proceeding as complainants, may be permitted, when discovered, to become complainants, and to have the relief herein prayed for upon such terms as to your honor shall seem just and equitable.

29 Orators further show that, before the commencement of this suit, but at what exact time orators do not know, said Isaac Seymour departed this life; that in his lifetime, said Seymour failed and neglected to execute the trusts created by said trust deed and mortgage, and did not dispose of any of such lands, or pay any part of said indebtedness as required by said instruments; that, by the reason of the death of said Seymour, the said trusts have become incapable of execution without the aid of this court.

And orators file herewith copies of said trust deed and mortgage and pray that the same may be taken as a part of this bill; that all the defendants be required to answer specifically the allegations of this bill according to the rules of practice of this honorable court.

And orators here set out the number, amount, and character of the bonds and interest warrants aforesaid held by each of your orators; that from original purchasers of said bonds, your orator John W. Kennicott became the bona fide holder and owner of the following bonds for the sum of five hundred dollars, with the interest warrants thereto attached, to wit, bonds numbered 14, 15, 34, 212, 252, & 254; and there is now due and unpaid on said bonds twelve annual instalments of interest.

Your orator Thomas Upham is the bona fide owner & holder of said bonds for one thousand dollars each, numbered 471, 460; & bonds for five hundred dollars each, numbered 113, 226, & 234; & that there is now due and unpaid on said bonds, twelve semi-annual instalments of interest.

Your orator Ebenezer W. Stone is the bona fide owner & holder of said bonds, numbered 353, for the sum of five hundred dollars; & there is due & unpaid on said bonds twelve semi-annual instalments of interest.

Your orator Joseph W. Ward is the bona-fide owner & holder of the following numbered bonds for $500 each, Nos. 45, 48, 40, 41, 374, 375; and for one thousand dollars each, Nos. 352, 357, 372, 351, 356, 358, & 402; and there is due and unpaid on said bonds twelve semi-annual instalments of interest.

Your orator Austin Myers is the bona-fide owner and holder of the following-numbered bonds for the sums set forth to said numbers:

No. 93 for $1,000.	No. 91 for $1,000.
" 94 " $1,000.	" 92 " $1,000.
" 95 " $1,000.	" 97 " $1,000.
" 96 " $1,000.	" 98 " $1,000.
" 169 " $1,000.	" 99 " $1,000.
" 100 " $1,000.	

Bonds numbered from 152 to 174, inclusive, of $1,000 each; also, bonds numbered from 221 to 250, inclusive, for $1,000 each; on which bonds there is now due and unpaid twelve semi-annual instalments of interest.

Your orator Joseph W. Ward is the further owner and holder of the following bonds for one thousand dollars each, to wit, numbers 386, 359, 268, 409, 130, 388, 395, 397, 405, 323, 436, 408, 59, 390, 396, 404, 406; & bonds for $500 each, & 279, 280, 281, 282, 400; for $500 each, numbered 368, 366, 364, 362, 360, 358, 253, 43, 369, 19, 251, 365, 363, 361, 359, 355, 230, 93, and 267, 407; & 56, 276 for one thousand dollars; that there is now due and unpaid twelve semi-annual instalments of interest on each of said bonds; that there is now due a large amount of coupons, or interest warrants, attached to each of the said bonds held by your orators, and demand has been made for the payment of said interest.

30 Your orator John H. Brown is the bona-fide owner and holder of the said bonds for one thousand dollars each, number as follows, 119, 120, 144, 258, 344, 318, 319, 320, 322, 413, & 459; and for five hundred dollars each, numbered as follows, 51, 52, 53, 54, 55, 56, 57, 58, 59, 247, 266, 268, 383, 385, 390, 391, 395, 97, 287, & 387, and the interest coupons thereto attached respectively; and there are now due and unpaid seventeen semi-annual instalments of interest on each of the said bonds, for which demands have been duly made.

Your orator Morris J. Earl is the bona-fide owner & holder of the said bonds for one thousand dollars each, numbered respectively 495, 514, 553, 567, 570, 572, & 574; and for five hundred dollars each, numbered respectively 306, 305, 307, 308, & 309, and the interest coupons thereto attached respectively; and that there are now due and unpaid seventeen semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

Your orator Cyrus Wakefield is the bona-fide owner and holder of the said bonds for $1,000 each, numbered respectively 117, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 325, 326, 327, 342, 424, 425, 426, 427, & 429; and for five hundred dollars each, numbered 35, with the interest & coupons thereto attached; and that there are now due and unpaid nineteen semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

Your orator the said William R. Hodges is the bona-fide owner and holder of the said bonds for $1,000 each, respectively numbered 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600; and for $500 each, numbered respectively 119, 126,

223, 233, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 255, 299, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 350, with the interest warrants or coupons thereto attached; and there are now due and unpaid twenty-eight semi-annual instalments of interest on each of said bonds, for which demands have been duly made.

And your orator, the said William R. Hodges, further showeth that he is the bona-fide owner and holder of certain other interest warrants or coupons nominally amounting to the sum of thirty thousand dollars; that the said warrants were originally attached to but are now detached from other of said bonds; that the payment of the said warrants was and is secured in like manner as aforesaid; that the same are now due and unpaid, and that demand has been duly made for the payment thereof, which said warrants will be produced upon the hearing of this cause.

Page 29, end 10th line.

And orators pray that, on the final hearing herein, your honors will order, adjudge, and decree them an account to be taken of the amount due orators respectively on said bonds and warrants; that a trustee be appointed by the court to execute the powers conferred by said mortgage and deed of trust; that said trustee proceed to sell so much of said lands as shall be required to pay the sums due orators, and that orators have such other and further relief in the premises as unto your honors may seem consistent with equity and good conscience. And orators will ever pray.

SCATES, McLERNDON & BROADWELL,
& HAY, GREENE & LITTLER,
Solicitors for Complainants.

(Indorsed:) Filed Jan'y 17th, 1870. J. A. Jones, cl'k.

31 Then afterwards, to wit, on the twenty-eighth day of May, in the year last aforesaid, came again said complainants by their said solicitors, and filed in said clerk's office their fourth amended bill, which said fourth amended bill is in the words and figures following, to wit:

4th amended bill.

To the honorable judges of the circuit court of the United States within and for the southern district of the State of Illinois, in chancery sitting:

Your orator William R. Hodges, who is an alien and subject of her Majesty Victoria, Queen of Great Britain, complaining, respectfully sheweth unto your honors, that your orator and John Kennicutt, Thomas Upham, Ebenezer Stone, John W. Ward, Austin Myers, John H. Brown, and Cyrus Wakefield, as co-complainants, did, on the seventeenth day of January, A. D. 1870, exhibit their amended bill of complaint in this honorable court in a certain cause pending on the chancery side thereof, against The Board of Supervisors of the County of Wayne, in the said State of Illinois, and The Mount Vernon Railroad Company, in the same State, defendants, and that said cause is still pending and undetermined in this honorable court.

And your orator further sheweth that he claims in and by the said amended bill to be the bona-fide owner and holder of certain bonds and interest coupons, some of which coupons are attached to said bonds, and others of which are detached from like bonds, issued by the said

Mount Vernon Railroad Company, and that the payment of the said bonds and coupons is secured by a first general mortgage on the railroad of said company, to wit, The Mount Vernon Railroad, and its rolling stock, franchise, and corporate property, and by a first mortgage and a deed of trust of 100,000 acres of land in said county of Wayne; which said mortgage and deed of trust are made exhibits in and by the original bill in said cause.

Sheweth that twenty-one of said bonds are of the denomination each of $1,000.00, and are numbered, respectively, 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600. That fifty-seven of said bonds are of the denomination each of $500.00, and are numbered respectively, 119, 126, 223, 233, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 247, 249, 255, 299, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 350, and that all of said bonds are of the same series, and are either of the denomination of $500.00, or $1,000.00, and bear interest at the rate of seven per centum per annum, payable semi-annually on the first day of May and November in each year, as will more fully and at large appear in this and in other pertinent and material respects by one of the said bonds of the denomination of $500.00, and numbered 299, and the interest coupons thereto attached, which said bonds and coupons are herewith filed as an exhibit, and prayed to be taken as a part of this supplemental bill.

Sheweth that the same number of coupons attached to the said exhibit is attached to each of the other of the said bonds, the numbers whereof are hereinbefore mentioned, that is to say, twenty-eight of said coupons are attached to each of said bonds.

Sheweth that the remainder of said coupons detached from other like bonds as aforesaid and owned as aforesaid by your orator, nomi-
32 nally amounted to the sum of $30,000.00 or thereabout, and are of the same tenor and effect as the coupons attached to said exhibit, excepting that some of said detached coupons called for an amount of interest corresponding, at the rate of interest aforesaid, to the principal money specified in said bonds of the denomination of $1,000.00.

Sheweth that, during the pendency of this cause and since the last term of this honorable court, to wit, on the 17th day of March, A. D. 1870, all of the said bonds numbered respectively as aforesaid, together with the said coupons attached thereto, and the said coupons detached from other like bonds, the same then being still owned by your orator, were, together with the house in which they were then kept, totally and accidentally destroyed by fire, at Kenner, in the State of Louisiana; excepting, however, three of said bonds, to wit, numbered respectively 228, 229, & 230, which happened, at the time of said fire, to have been kept by your orator in another place than the said house destroyed as aforesaid; and excepting, also, the said bond numbered 299, which had been previously left by your orator with his solicitors in this cause for their information, and which is herewith filed as an exhibit.

In consideration whereof and forasmuch as your orator is entirely remediless in the premises, except in a court of equity, where matters of this nature are properly cognizable and relievable, may it please your honors, that the said defendants may be required to appear and make true and perfect answer to all and singular the matters hereinbefore (in this supplemental bill) stated and charged, according to the best of their respective knowledge, information, and belief, (their oaths thereunto being hereby waived;) and your orator prays in this his said supple-

mental bill the same relief, both special and general, prayed for by him and his said co-complainants in and by their said amended bill.

And he will ever pray, &c.

McCLERNAND & BROADWELL,
Sol's for said Complainants.

(Indorsed:) Filed May 28th, 1870. J. A. Jones, cl'k.

Now, afterwards, to wit, on the seventh day of July, in the year last aforesaid, came again said complainants, by their said solicitors, and filed in said clerk's office their fifth amended bill, which said fifth amended bill is in the words and figures following, to wit:

5th amended bill.

Of the June term of the circuit of the United States for the southern district of Illinois.

Amend by inserting in 3rd amendment to the bill, page 1, lines 8 & 10, the names and citizenship of following parties:

JOHN W. KENNICOTT ET AL. *v.* THE BOARD OF SUPERVISORS OF WAYNE County & others.	In chancery. Bill to foreclose.

Insert at page 20 and at end of 10th line the following paragraph:

Your orator would further represent that Charles E. Jackson is
33 the bona-fide owner & holder of the following bonds with interest coupons attached, viz, bond No. 11 for $1,000, and bonds Nos. 207 & 229 for $500 each, and upon which interest remains due for the past ten years & more, and unpaid; and that he purchased said bonds for a fair and valuable consideration in the due and regular course of trade.

Your orator would further represent that the said John S. Smith is the bona-fide owner and holder of the following of said bonds, viz, bond No. 49 for $500, with the coupons attached, and upon which interest remains due and unpaid for more than ten years past; and that he purchased said bonds for a fair & valuable consideration in due course of trade.

Your orator would further represent that the said Henry V. Davis is the bona-fide owner & holder of the following bonds and coupons attached, purchase' in due course of trade for a fair and valuable consideration, and upon which interest remains due & unpaid for more than ten years, to wit, bond No. 210 for ($500) five hundred dollars.

Your orator would further represent that John L. Priest is the owner & bona-fide holder of the following of said bonds with interest coupons attached, purchased in due course of trade for a fair and valuable consideration; and upon which interest remains due and unpaid for more than ten years, that is to say, bond No. 42 for five hundred dollars, ($500.)

Your orator would further represent that the said William C. Plunkett is the bona-fide owner & holder of the said bonds numbered 61 and 376 for one thousand dollars each, with the interest coupons attached, and which interest remains due and unpaid for more than ten years past; and which said bonds he purchased in due course of trade for a fair and valuable consideration.

Your orator would further represent that the said John L. Dixwell is the bona fide owner & holder of said bonds numbered 18 & 53 for $1,000 each, and Nos. 4, 79, 134, 227 for $500 each, with coupons for interest attached, and which interest remains due and unpaid for more than ten years, and all of which said bonds were purchased in due course of trade for a fair & valuable consideration.

Your orator would further represent that Joseph Smith is the bona fide owner & holder of bonds numbered 12, 13, 22, & 30 for $1,000 each, with the interest coupons attached, and which interest now remains due and unpaid for more than ten years; and that he purchased said bonds in the due course of trade for a fair & valuable consideration.

Your orator would further represent that the said Arthur F. Gould is the bona fide owner & holder of twenty-three (23) of the coupons detached from part of the said 800 bonds so issued and negotiated by the said railroad company, and which said twenty-three coupons were detached from said bonds by the bona fide owner & holder of said bonds after the said coupons had become due and payable by the terms thereof for the sum of seventeen $\frac{50}{100}$ dollars each ($17.50,) and sold & delivered to said Gould in due course of trade for a valuable consideration; and which said interest remains due & unpaid, & every part thereof, amounting to the sum of four hundred & two $\frac{50}{100}$ dollars, ($402.50.)

Your orators further represent that the said Andrew H. Ward is the bona fide owner & holder of bonds numbered 209, 229, and 257 for $500, and bond No. 11 for $1,000, with the interest coupons attached, and which said interest remaining due and unpaid for more than ten years last past; said Ward purchased said bond in the due course of trade for
34 a valuable consideration. Said Ward is also the bona fide owner & holder of interest coupons, detached from a part of the said 800 bonds so issued & negotiated by the said railroad company, for the aggregate sum of one thousand and fifty dollars, ($1,050.00,) and which said interest coupons were detached from said bonds by the bona fide owner & holder thereof after the said coupons had become due & payable by the terms thereof; and which were sold & delivered to the said Ward in due course of trade for a fair & valuable consideration, & which said interest remains due & unpaid.

Your orators further represent that the said Joseph Burnett is the bona fide owner and holder of *three* of said bonds, numbered 62 & 466, for one thousand dollars each, with the interest coupons thereto attached, and which interest remains due & unpaid for more than ten years *paid;* said bonds were purchased by said Burnett in due course of trade for a fair and valuable consideration.

Your orator would further represent that said William L. Rolston is the bona fide owner & holder of said bonds numbered 375 & three hundred & eighty-four (384) for $1,000 each, and bonds Nos. 44 & 50 for $500 each, with the interest coupons attached to each of said bonds, and upon each of which interest remains due & unpaid for more than ten years past; and all of which said bonds were purchased by said Rolston for a fair & valuable consideration in the due course of trade.

Your orators further represent that William P. Emerson is the owner & bona fide holder of bonds Nos. 471, 460, & 116 for $1,000 each, & bonds Nos. 226, 224, 113, 396, 214, 215, 248, 11, 10, & 100 for $500 each, with coupons attached, on which interest remains due & unpaid for more than ten years; and all of which were purchased in due course of trade at a fair & for a valuable consideration.

Your orators further represent and aver that the said Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunk-

ett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, William P. Emerson, and Joseph Burnett are, respectively, residents in and citizens of the State of Massachusetts; and said William L. Rolston is a resident in and a citizen of the State of Ohio, in the United States of America.

(Indorsed:) Filed July 7th, 1870. J. A. Jones, cl'k.

And afterwards, to wit, on the 7th day of November of the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
v.
THE BOARD OF SUPERVISORS OF WAYNE County and others. } In chancery.

This day came again, as well the complainants as the defendants herein, by their solicitor; and, on motion of the complainants, leave is granted to amend their said bill and amended bill by striking out the names of Thomas Upham and Charles E. Jackson as parties complainants herein.

Petition to amend bill.

And afterwards, to wit, on said seventh day of November of
35 the year last aforesaid, came again William R. Hodges, one of the complainants herein, and filed in said clerk's office his petition to amend the bill of complaint herein, which said petition is in the words and figures following, to wit:

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al. } Bill in chancery, &c.

In the circuit court of the United States within and for the southern district of Illinois.

To the Hon. S. H. Treat, judge, &c., in chancery sitting:

Your orator, William R. Hodges, by leave of the court, &c., comes and amends the bill herein by showing to the court that, in addition to the bonds and coupons in said bill described as being owned by your orator, he is the owner and bona fide holder, for a valuable consideration, of the following-described coupons, detached from bonds issued and sold as set forth in said bill, to wit:

1st or "No. 1" coupons of $35.00 each from $1,000.00 bonds:

200 coupons from bonds of Nos. 401 to 600, inclusive, due Nov'r 1st, 1859, 35.00 each	7,000 00
45 do. do. *from* bonds Nos. 356 to 400, inclusive, 35.00 each	1,575 00
41 do. do. 301 to 303, 314 to 337, 342–355, all inclusive, 35.00 each	1,435 00
10—Nos. 125, 131, 132, 133, 218, 219, 347, 348, 349, & 450—@ 35.00 each	350 00
Total, 296 1st coupons, due Nov. 1st, 1859, @ 35.00 .	$10,360 00

296	2d do. from same bonds & numbers, due May 1st, 1860		10,360 00
130	3rd do. from bonds Nos. 451 to No. 580, inclusive, @ 35.00 each, due Nov. 1, '60		4,560 00
	Total, 722 coupons of 35.00 each, value		25,270 00

No. 1 coupons from $500 bonds:

58	coupons from bonds Nos. 2 to 59, inclusive.		
142	" " " " 259 " 400,		
37	" " " " 118 " 134, "		
51	" " " " 207 " 258, "		
2	" " " Nos. 1 & 200.		
290	No. 1 coupons, due Nov. 1st, 1859, @ $17.50 ea		5,175 00
290	" 2 " same Nos., May 1st, 1860, "		5,175 00
130	3rd do. Nos. 1 to 29, inclusive	29	
	" 51 59, "	9	
	" 260 286, "	27	
	" 291 298, "	8	
	" 351 400, "	50	
	" 239, 347, 348, 449, 450, 317, 336	7	
		130 17 50	2,275 00
36	3 4th do. Nos. 255, 256, 317, 17.50		52 50
	Total, 743 coupons, @ 17.50.		
	Total value, without interest		$37,947 50

All of which your orator prays may be decreed him, &c.

McCLERNAND & BROADWELL,
Sol's for Hodges.

Filed November 7th, A. D. 1870. J. A. Jones, clerk.

Afterwards, to wit, on the seventh day of December, in the year last aforesaid, came again said defendants, by their said solicitors, and filed in said clerk's office their answer to complainant's bill of complaint, which said answer is in the words and figures and following to wit:

Answer of Board of Supervisors of Wayne Co.

The answer of the Board of Supervisors of Wayne County, Illinois, to a bill exhibited in the circuit court of the United States for the southern district of Illinois, in which said bill John W. Kennicott, Thomas Upham, Ebenezer W. Starne, Joseph Ward, and Austin Myer are complainants, John H. Brown, Cyrus Wakefield, Charles E. Jackson, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Woodard, Joseph Burnett, and William L. Rolston, and in which your respondents and the Mt. Vernon Railroad Company are defendants.

Your respondents, for answer to so much of said bill as they are advised it is necessary for them to answer, say: That they have no per-

sonal knowledge in relation to the passage of an act by the legislature of the State of Illinois creating or providing for the creation of Mt. Vernon Railroad Company, nor as to the organization of said company, nor as to the issuing of bonds and the making of a mortgage by said company to secure the payment of said bonds, as said facts are alleged in said bill; but they have very little doubt, from general information, as to the truth of said several facts alleged; but, for greater certainty, they call upon said complainants for strict proof each and all of said allegations; and especially do they protest against the right of the said railroad company to commit or affect the rights or interests of Wayne County in and to the swamp lands in said bill referred to, by anything said or done by said railroad company in said bonds or mortgage.

Your respondents, further answering, say that they believe the said complaints in their bill have truly, and in effect, set forth the provisions of sections 7, 8, and 9 of the said act of the legislature of the State of Illinois, entitled "An act to incorporate the Mount Vernon Railroad Company," approved Feb'y 15, 1855; but for greater certainty they refer to said three sections of said act, which they pray may be taken as a part of this their answer.

Your respondents, further answering, say that at the time of making the mortgage set forth in said bill, and purporting to be the mortgage of Samuel J. R. Wilson, county judge, and Thomas M. Scott, as
37 the county court of Wayne County, and bearing date the 20th day of April, A. D. 1859, the said Mount Vernon Railroad was not located, did not run, and there was no authority nor right to locate or run it through the said county of Wayne.

They further deny that at that time there was any other railroad running through said county of Wayne, with which said Mount Vernon Railroad was joined, connected, or intersected; that said Mount Vernon Railroad did not then connect with any railroad in said county of Wayne.

They expressly deny that said Mount Vernon Railroad was ever consolidated with any railroad running through said county of Wayne.

They deny that it was ever consolidated with the Belleville and Fairfield Railroad.

They deny that the Belleville and *and* Fairfield Railroad Company was ever organized, or that any route for their railroad was ever selected by said company, as provided in their act of incorporation.

Your respondents, further answering, deny that the county court of Wayne County ever subscribed for any stock in said Mt. Vernon Railroad Company, or authorized any person to do so for them.

They deny that, at any regular or special term thereof, said county court ordered a special election to be held for the purpose of taking the sense of the qualified voters of said county of Wayne in relation to disposing of the swamp and overflowed land of Wayne County to aid in the construction of said Mt. Vernon Railroad.

They deny that the county court of said county of Wayne, before the executing of said mortgage, or since, presented a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in constructing of said Mt. Vernon Railroad, or printed any such proposition as an election ticket that the voters of said county of Wayne might express their will at large on said proposition by writing "Yea" or "Nay" on said ticket.

They deny that said county court of Wayne County ever, at any time, prepared and submitted to the qualified voters of Wayne County any distinct idea of any plan or plans for aiding in the construction of said

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277.

Supreme Court United States

4th Otto.

498-544

Mt. Vernon Railroad, as required by the letter or spirit of said sections 7, 8, and 9 of said act of the legislature.

They further deny that the county of Wayne ever executed, or authorized any person to execute, said mortgage, which is sought to be enforced by said complainants against said county by said bill.

They deny that the county court of Wayne County ever executed any such mortgage, or, if they did, that they had any authority to do so from the qualified voters of said county.

They deny that said exhibit, claimed in said bill as the mortgage of Wayne County, purports or professes to be the act of Wayne County, or of the county court of Wayne County, but is only the act of the said Samuel J. R. Wilson and Thomas M. Scott.

These respondents further charge that said complainants well knew at the time they took the bonds that there was no railroad running through the said county of Wayne with which said Mt. Vernon Railroad joined, connected, or intersected; in fact, that said Mt. Vernon Railroad joined no railroad running through, or even partly through, said county of Wayne. They well knew that the county court of Wayne County had never submitted to the voters of Wayne County for their *asserting* proposition for a plan to aid in the construction of said Mt. Vernon Railroad, as required by said sections; they well
38 knew that the county of Wayne had never executed or authorized the execution of said mortgage; that the county court of said county of Wayne had never executed said mortgage; and, in a general way, were well informed, and had notice that every material fact was wanting authorizing or justifying the county court of Wayne County in conveying or mortgaging said swamp and overflowed lands in pursuance of the provisions of said sections 7, 8, and 9; they well knew that there was no law of the State of Illinois authorizing the county court to mortgage or convey the swamp lands; that, although said sections might, under the contemplated circumstances, provide for conveying or mortgaging, yet such deed or mortgage could only, under the law, be executed by the clerk of the county court, under the seal of the county.

These respondents deny expressly and specially that, at the time of the passage of the act providing for the construction of the Mt. Vernon Railroad, to wit, on the 15 Feb'y, 1855, *that* there was a line of railroad laid out and established in and through said county of Wayne by the Belleville and Fairfield Railroad Company, was organized with all necessary and proper officers, as required by their charter.

They deny that, on the 30th day of April, 1855, or any other time, *that* the board of directors of said two companies, and their secretaries, met at the office of the Mt. Vernon Railroad Company, in the town of Mt. Vernon, or elsewhere, and by a mutual agreement of the said two railroad companies, and by virtue of the law of the State of Illinois, joined, connected, intersected, and consolidated said two railroads, and that no such meeting or agreement was then, or at any other time, done, had, or made, either in spirit, letter, or effect, so as to consolidate them into one, or in any wise to join, connect, or intersect them; that no board was ever elected or organized of a new road made out of the two, and with the name as stated in said bill. They specifically deny that any such joinder, connection, or intersection of said roads was ever made, so as to justify or authorize the county court of said county of Wayne to execute said mortgage, or to make that or any other disposition of said swamp lands.

They deny that, before the pretended execution of said mortgage, the

county court of Wayne County, at any term of said court, held at the court-house in the county of Wayne for that purpose, by the judges thereof, did order and dispose of the swamp and overflowed lands, the property of said county, or order and decree that the county court of Wayne County execute and deliver to said Mt. Vernon Railroad a mortgage and deed of trust of said lands, as security for the payment of said bonds, or to aid in the construction and maintenance of said railroad.

They deny that said county court, on the 28th day of Sept., 1855, ordered a special election, taking the sense of the legal voters of Wayne County upon the mortgaging the swamp and overflowed lands in said county for the purpose of aiding in the construction and maintenance of the said Mt. Vernon Railroad, in pursuance of said sections 7, 8, and 9, as alle*d*ged in said bill, or that they did propose a plan, as stated in said bill, o*f* any distinct idea of a plan, for aiding in the construction of said road, or that any election was held to vote upon such plan submitted in pursuance of said act, or that there was any vote or majority at said election for any such plan as is stated in such bill.

These respondents submit herewith a copy of the order of said court, referred to in said bill, which order they make a part of this, their answer; and they charge that said order did not propose a dis-
39 tinct idea of a plan to aid in the construction of said railroad, or any other specified railroad, but was only to test the sense of the voters of said county whether they would devote the swamp land to building railroads, or some other purpose; it was only intended to settle a question as to a general fe'ling, and not to propose any specific plan or idea for the construction of any particular road or roads.

These respondents again specifically deny that the county court of Wayne County, by said proceeding, became authorized to make said mortgage, or any other, or that, in consequence thereof, they determined to do so.

They deny that the county of Wayne, or the county court of said county, ever in open court executed said mortgage, or authorized any person to execute said mortgage. They deny that the official seal of said county was ever affixed to said mortgage; that the said Samuel J. R. Wilson and Thomas M. Scott may have executed said mortgage, but they had no authority to do so, and that their act is null and void as to said county; and they deny that by said mortgage said swamp land was donated, granted, bargained, sold, remised, released, conveyed, and confirmed to said Seymour for any such trusts as were set forth in said bill.

These respondents do not know whether or not said Mt. Vernon Railroad Company laid out their line of road to Ashley, and acquired the right of way or not, as is alle*d*ged in said bill, or whether, after the execution of said mortgage, bonds were issued and sold, as therein alle*d*ged, or whether said complainants purchased of said bonds, as alle*d*ged in said bill, but they call upon complainants for strict proof of all said facts.

They deny that any part of said railroad has ever been built, but on the contrary, has been entirely abandoned, and the county of Wayne received no consideration whatever for said mortgage. It is true, as stated, said county has failed, and still fails, to pay or provide for the payment of the interest upon any and all of said bonds, not believing said county to be under any legal obligation to do so.

Respondents further state that all of the allegations in complainants' bill not especially answered or avoided, are hereby positively denied. And now, having fully answered all they are advised is necessary and

proper should be answered, ask to be discharged hence, with their reasonable costs.

BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS.

Attest:

[L. S.] OLIVER HOLMES,
County Clerk.

Exhibit to answer.—See page 164.

October special term, A. D. 1855.

At a special term of the county court, begun and held at the court-house in Fairfield, on Saturday, the 13th day of October, A. D. 1855—present Hon. D. Turney, co. judge; Hon. Sam'l Hooper, associate.

Whereas at a meeting of the citizens of Wayne County, held at the court-house in Fairfield, on Saturday, the 6th inst., for the purpose of taking into consideration the subject of our swamp lands as a bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair, and appointing Thomas
40 Lowery secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way: Therefore,

Resolved, That the said county court be requested to order a vote "For a railroad" and "Against a railroad," and if the majority of the vote in the county be cast for a road, the said county court shall give our swamp lands, or such part thereof as shall be necessary to secure the building of a railroad through Wayne County.

It is therefore ordered that the clerk of this court be required to advertise for a poll to be opened at the different precincts of Wayne County, at the ensuing November election, that the electors may vote for a railroad and against a railroad, in pursuance of the foregoing resolution.

Ordered that the court adjourn until court in course.

D. TURNEY.
SAMUEL HOOPER.

STATE OF ILLINOIS, *Wayne County, ss:*

I, Oliver Holmes, clerk of the county court in and for said county, and custodian of the records of said court, do hereby certify that the foregoing is a true and correct copy of all the proceedings had at the October special term, A. D. 1855, of the county court in and for said county, as appears on the records of my office.

Witness my hand and the seal of said court affixed at Fairfield this November 2nd, A. D. 1869.

[L. S.] OLIVER HOLMES, *Co. Clk.*

It is agreed that the within may stand as the answer to the bill, as amended Nov. 7, 1870.

(Sign'd) GOODWIN, LARND & TOWLE,
For Complainants.

(Indorsed:) Filed Dec'r 7th, A. D. 1869. J. A. Jones, cl'k.
(Indorsed:) Refiled November 7th, 1870. J. A. Jones, cl'k.

Afterwards, to wit, on said seventh day of November, of the year last aforesaid, came again said complainants, by their said solicitors, and filed their replication to the defendant's answer herein, which said replication is in the words and figures following, to wit:

Replication to deft.'s answer.

United States circuit court, southern district of Illinois, ss.

In chancery.

The replication of John W. Kennicot & others, complainants, to the answer of The Supervisors of Wayne County, of Illinois, defendant.

These repliant', saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient
41 in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver, maintain, and prove, *and* this honorable court shall direct. And humbly pray, as in and by their said bill they ha already prayed.

GOODWIN, LARNED & TOWLE,
Solicitors for Complainants.
HAY, GREENE & LITTLER,
Of Counsel for Comp'ts.
McCLERNARD & BROADWELL,
Sol's for Compl'ts.
W. B. SCATES,
Sol's & of Counsel for Compl't.

Filed November 7, A. D. 1870. J. A. Jones, clerk.

And heretofore, to wit, on the 7th day of July, in the June term of said court of the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY et als. } In chancery.

This day came again the parties, by their solicitors, and, by agreement, leave is granted to complainants to amend bill, and this cause set for hearing on the first Monday of November next.

Agreement between Norman A. Smith et al. and Barnard L. Voorhees.

Articles of agreement made and entered into this twentieth day of

October, in the year of our Lord one thousand eight hundred and fifty-eight, between Norman A. Smith, of the city of Troy, New York, Isaac T. Van Duser, of Versailles, Illinois, and Barnard L. Voorhees, of the city of St. Louis, Missouri, doing business under the name, style, and firm of Van Duser, Smith & Company, party of the first part, and the County of Jefferson, in the State of Illinois, party of the second part, and Joel Pace, trustee of the Mount Vernon Railroad Company and of said county of Jefferson, party of the third part, and John C. Gray, Hezekiah B. Newby, Zadok Casey, Willis Duff Green, Harvey T. Pace, Angus M. Grant, Joel Pace, Tazwell B. Tanner, William B. Anderson, William H. Herdman, Stephen T. Strattan, John R. Allen, and John S. Bogan, P. Grant, James Westcott, Thompson Angler, party of the fourth part, witnesseth :

That, whereas by deed bearing date on the 11th day of June, 1856, between the County of Jefferson, party of the first part, and The Mount
42 Vernon Railroad Company, party of the second part, and Joel Pace, as trustee, certain lands and real estate therein described were conveyed by the said County of Jefferson to the said Joel Pace, for the uses and purposes, and on the trusts therein expressed, that is to say, for the purpose of building a railroad from Mt. Vernon, in Jefferson County, to some point on the Illinois Central Railroad or the Chicago Branch, one or both, upon the terms and conditions therein set forth to be performed :

And whereas the said party of the first part have agreed, and by these presents do covenant and agree, to build, and equip, and operate a railroad from Mt. Vernon aforesaid to Ashley, on the Illinois Central Railroad, as hereinafter set forth:

And whereas, in order to enable said party of the first part to construct and finish said railroad, it is necessary to transfer to them all the privileges and corporate powers in the act of incorporation of said Mt. Vernon Railroad Company contained, together with all the stock, property, rights, and credits, belonging or in any wise appertaining to the same, in consequence of which it has become impracticable for the said party of the first part to enter into an agreement and covenants with the said railroad company to build, equip, and run said road, as was contemplated in and by said deed of trust; but it has become necessary that said contract and agreements for the objects and purposes of said deed of trust should be entered into with the County of Jefferson, and the other parties hereto, in order to carry those objects and the provisions of said deed of trust into full effect :

And whereas it is provided by an act entitled An act to amend an act to incorporate the Belleville and Fairfield Railroad Company and to change its name, that the several railroads therein named may be and become consolidated upon the terms and conditions, and in the mode therein provided, under the name of the St. Louis and Louisville Railroad Company, for the purpose of building a through line from Saint Louis to Louisville :

And whereas it is very desirable to the people of the several counties along the line of said proposed railroad, and especially to the citizens of the county of Jefferson, in the State of Illinois, that the same should be constructed through the State of Illinois :

And whereas the County of Wayne, in said State, has made a donation of certain lands of said county to certain individuals, for the purpose of accomplishing the same object in part :

And whereas the said party of the first part have entered into a negotiation with the said County of Wayne, and the said persons to whom said lands have been conveyed by said county, for the purpose

of extending the construction of the line of said railroads from Mt. Vernon, in Jefferson County, to the eastern boundary of Wayne County in said State of Illinois, which said negotiation is still pending at the ensealing and delivery of this agreement;

And whereas, in the event of an agreement being made between the said party of the first part and said County of Wayne, for said extension, it is desirable that that part of the road herein provided to be built, should become part and parcel of a through line, and of the line of said extension, and that the said Mt. Vernon Railroad Company should become consolidated with the other railroads, as provided in said above-recited acts, so far as the same may become practicable:

Now, therefore, to the intent to carry all or as many of those objects into full effect as may be practicable—

It is covenanted and agreed by the said party of the first part, to
43 and with the said party of the second part, and the said party of the fourth part, that, for and in consideration of the covenants and agreements on the part of the parties of the second, third, and fourth parts, and the payments hereinafter expressed to be made, they agree, covenant, and bind themselves, that they will commence the construction of said line of railroad at some convenient point at, in, or near to Ashley, on the Illinois Central Railroad, in Washington County, Illinois, or at some convenient point on the line, within thirty days from the sealing and delivery of this agreement; and that they will, with all convenient dispatch, prosecute, finish, and complete the same to Mount Vernon, in Jefferson County, in a substantial and workmanlike manner, and equip and operate the same between said two points within fifteen months from the commencement. That they will furnish all the necessary means and materials to construct, finish, and complete a first-class railroad in all and every respect whatsoever, and of "T" rail of not less than forty-five pounds weight to every lineal yard of the main track; and they will furnish and cause to be furnished, and kept and provided at all times, as many locomotives, passenger, freight, house, and platform cars as may be demanded by and required to transact all the business presented to be done on the same at the several depots and stations along the line, and run at least one train each way every day; that they will erect as many depots, freight-houses, and stations as may be necessary for the convenience of the public business, with sufficient side track for that purpose.

For and in consideration of the covenants and agreements on the part of the party of the first part to be performed, it is covenanted to and with the said party of the first part, as follows, that is to say, whenever, and as often as the said party of the first part shall have built and completed the grade, including masonry and bridging, on a section of three miles of said railroad line, then the said party of the second part agrees and hereby consents that the said party of the third part shall thereupon immediately convey to the said party of the first part, two thousand acres of said county lands so conveyed to and held in trust by him to and for said railroad purposes, by good and sufficient warrant*ee* deed, as such trustee. And the said party of the third part hereby covenants and agrees that then and in that case he will, as such trustee, convey to said party of the first part, by warrant*ee* deed as such trustee, two thousand acres of said lands so held in trust. And the said party of the fourth part do covenant and agree that they will pay to said party of the first part the sum of two thousand dollars for every such section of three miles of grade, including culverts and bridges so finished and completed as aforesaid; and so on from time to time as sections of three

miles as aforesaid shall be finished, said party of the second part consents to a further conveyance of two thousand acres, and said party of the third part will make further like conveyance of two thousand acres; and said party of the fourth part will pay a further sum of two thousand dollars to such party of the first part, until the whole of said grade, &c., shall be finished and completed from Ashley to Mount Vernon as aforesaid. And the said party of the fourth part do further covenant and agree that the said several persons who have subscribed labor as donations towards building said railroad, shall and will perform the same in the time and manner required by the said party of the first part, or their agent, upon receiving thirty days' notice of the time when the same is wanted, and in case of default on the part of said sub-
44 scribers, or either of them, to perform said labor as above provided, then the said parties of the fourth part will render and pay to the said party of the first part, at the rate and price of fifteen dollars per month for every month so subscribed and in default. And it is agreed between the said parties of the said first and fourth parts that the whole amount of labor so subscribed & to be performed or accounted for is forty-eight months.

It is further agreed between the said party of the first part and the said party of the fourth part, that the whole amount of monies subscribed by individuals to be paid as a donation towards building said railroad is eleven thousand dollars; which said party of the fourth part agree and bind themselves to *to* cause to be collected and paid over to the said party of the first part, in said sums of two thousand dollars as aforesaid for every section of three miles of grade, &c., so finished as aforesaid.

And it is further understood and agreed that, upon the completion of the last section or part of section of said grade, the said party of the fourth will pay over the balance of said subscription of eleven thousand dollars.

It is further agreed and understood by the said parties of the second, third, & fourth parts that, upon the said party of the first part giving security to the satisfaction *to* the said party of the second part, that then the said party of the third part may *may* and shall convey to the said party of the first part the remainder of the county lands described in said deed of trust, by like warranty deed; and also all other lands that may have been given by individuals as a donation towards the building of said railroad. And the said party of the fourth part do hereby covenant and agree to and with the said party of the first part, that the remainder of said lands so to be conveyed as aforesaid, or as hereinafter expressed, shall amount, together with the amount so to be conveyed as hereinbefore provided, upon the completion of the grade, &c., as aforesaid, to twenty-four thousand acres, and no more. It is understood and agreed by and between said parties that no part of the lands described in said deed of trust, upon which preemption' have been allowed or to which the county had no title, shall be so conveyed as any part or portion of said remainder or of said twenty-four thousand acres; but it is agreed that the amount so to be conveyed in the whole, shall not be less than twenty-four thousand acres including the amount so to be conveyed in part payment for said grade.

It is further agreed and understood by and between the said parties that, in case said party of the first part do not give security and take a conveyance in advance of the completion of any part of the superstructure, that the remainder as aforesaid so to be conveyed shall be conveyed in the following proportions, that is to say: Upon the laying

down and completing the superstructure of one mile of said railroad, the said party of the second part consents as aforesaid; and the said party of the third part agrees to convey, as aforesaid, such a proportion of the said remainder so to be conveyed as one mile may bear to the whole length of said line; and upon completing said superstructure, the balance of said lands so to be conveyed shall be so conveyed as before provided.

It is further covenanted and agreed by and between the said parties of the first, second, and third parts, and the said parties of the first, second, and third parts do hereby covenant and agree, to alter, change, modify the provisions of the said deed of trust, so as to extend the time for the completion of said railroad until the first day
45 of March, 1860; and that the conveyance of portions of said land mentioned in said deed of trust may be made as provided in this agreement, and at the several times herein agreed upon.

It is further covenanted and agreed between the several parties that, in case the said party of the first part shall be enabled and desirous to make sale of any part of said lands so to be conveyed before they are entitled to conveyances therefor, and shall enter into contracts therefor at the rate of five dollars an acre or more, the said several parties of the second, third, and fourth parts will consent to and cause the same to be conveyed to the proposed purchaser thereof, of any one or more of said tracts, upon such purchaser executing notes to the said party of the third part as such trustee, with a mortgage upon said tract or tracts so conveyed to secure the said purchase-money; and which said notes and mortgages, or the proceeds thereof when collected, shall be held on like trust, and transfered, assigned, and paid over to said party of the first part upon the like terms, conditions, and at the time hereinbefore provided for the conveyances of the lands themselves, as portions of said work may be from time to time finished and completed as aforesaid.

It is further covenanted and agreed by the said party of the fourth part, that they will procure and cause to be conveyed a right of way one hundred feed wide on such line of location as may be adopted by the said party of the first part, so far as the same can be procured by donation or purchase; and in case the owner on any part of the line will not donate or voluntarily sell the same, and the same is taken by condemnation, the said party of the fourth part will pay all damages, and the expenses and costs of the condemnation, and save and keep said party of the first part harmless and free of expenses or costs on account of the same.

And they further covenant and agree to procure in like manner by purchase or condemnation, and alike free of expense, a quantity of ground not less than three acres at every station for depot purposes, which said quantity may be laid off in such form as the said party of the first part shall choose and direct.

It is further covenanted, understood, and agreed between the parties that whenever the parties of the first part shall become entitled to a conveyance of any part of said lands on completion of parts of the grade, &c., and of the laying of the superstructure as hereinbefore provided, the mode of selecting the particular tracts so to be conveyed from time to time shall be as follows: The said party of the first part shall select one-half of said tracts, and said party of the third part shall select the tracts for the other part, provided both parties shall be confined in their selections to lands contained in said deed of trust; and provided further, that neither party shall select said tracts so pre-empted as aforesaid nor said tracts to which there was and is no title in said county of Jefferson.

It is further covenanted and agreed by the said party of the second part that it will, with all reasonable diligence, prosecute the claim of The County of Jefferson against the United States for the proceeds, whether in money or scrip, of the sales of all the lands selected as swamp lands, and which were sold by the United States after the passage of the swamp act on the 28th day of September, 1850; and, after deducting the expense of recovering the same, said party of the second part will pay over the balance thereof to the said party of the first part, or, in case said party of the first part prefer, they may prosecute said claim themselves free of charge and expense to the said party
46 of the second part, and take whatever may be recovered, and for that purpose may prosecute the same in the name of the said party of the second part.

It is further agreed that the certificate of the engineer in charge of the work on the railroad will be received as evidence that a section of work has been constructed according to the provisions of this agreement.

It is further agreed that said parties of the first part will not exceed the usual rates of passenger fare and freights on the railroad in the State of Illinois.

In testimony whereof the said parties have hereunto respectively subscribed their hands and seals the day and year first above written.

I. T. VAN DUZER.	[SEAL.]	S. T. STRATTAN.	[SEAL.]
N. A. SMITH.	[SEAL.]	JOHN R. ALLEN.	[SEAL.]
B. L. VOORHEES.	[SEAL.]	JOHN S. BOGAN.	[SEAL.]
JEFFERSON COUNTY,		E. P. GEAT.	[SEAL.]
By JOHN R. SATTERFIELD,		JAMES WESTCOTT.	[SEAL.]
S. W. CARPENTER,		THOMPSON ANGLER.	[SEAL.]
W. ADAMS,		JOHN WAITE.	[SEAL.]
County Judges.		EDWARD MCATEE.	[SEAL.]
JOEL PACE, *Trustee.*	[SEAL.]	A. P. ELKINS.	[SEAL.]
Z. CASEY.	[SEAL.]	SAMUEL GIBSON.	[SEAL.]
H. B. NEWBY.	[SEAL.]	JAS. B. TOLLE.	[SEAL.]
W. DUFF GREEN.	[SEAL.]	DAVID STEWART.	[SEAL.]
JNO. C. GRAY.	[SEAL.]	THOS. H. HOBBS.	[SEAL.]
H. T. PACE.	[SEAL.]	RICHARD S. NELSON.	[SEAL.]
A. M. GRANT.	[SEAL.]	JOHN S. BLAKE.	[SEAL.]
JOEL PACE.	[SEAL.]	L. S. BROOKINS.	[SEAL.]
	[SEAL.]	B. F. BREWER.	[SEAL.]
WM. B. ANDERSON.	[SEAL.]	D. C. WARREN.	[SEAL.]
	[SEAL.]		

December special term, A. D. 1868.

At this Norman T. Smith came into court and presented articles of agreement between Isaac T. Van Dusen, Norman A. Smith, Barnard L. Voorhees, of the first part, and Samuel J. R. Wilson and Thomas J. Scott, of the second part; and *for* consideration and *for* mature deliberation—

It is ordered and adjudged by the court that the same be approved and recorded, and which is in figures and words as follows, to wit:

Articles of agreement between Isaac T. Van Duzen & S. J. R. Wilson.

ISAAC T. VAN DUZEN & OTHERS *vs.* SAMUEL J. R. WILSON & THOMAS M. SCOTT. } Articles of agreement.

Articles of agreement made and entered into this nineteenth day of November, in the year one thousand eight hundred and fifty-eight, be-

tween Isaac T. Van Duzer, of Versailles, Illinois, and Norman A. Smith, of the city of Troy, and State of New York, Barnard L. Voorhees, of St. Louis, State of Missouri, doing business in the name, style, and firm of Vanduzer, Smith and Company, parties of the first part, and Samuel J. R. Wilson, county judge of, and Thomas M. Scott, associate jus-
47 tice of, the county court of Wayne County, State of Illinois, on behalf of the said County of Wayne, party of the second part, witnesseth:

That, in consideration of the covenants made and entered into by the said party of the second part, it is agreed and covenanted by the said party of the first part to and with the party of the second part hereto, that they, the said party of the first part, will commence the construction of a first-class single-track railroad at Fairfield, Wayne County, State of Illinois, within ninety days from the sealing and delivering of this agreement; and that they will, with all convenient despatch, prosecute, finish, and complete the same from Mt. Vernon, Jefferson, County, to the eastern boundary of Wayne County, terminating on the "old survey" of the Alton, Mt. Carmel and New Albany Railroad, or within one mile thereof, in a substantial and workmanlike manner, and equip and operate the same between the two said points within the time of two years from the sealing and delivering thereof; and that they will furnish all necessary means, material, &c., to construct, finish, and complete a first-class railroad in all and every respect whatsoever, with a "T" rail of not less than forty-five pounds to the lineal yard of said track; and that they will furnish or cause to be furnished, and keep and provide, at all times, as many locomotives, passenger, freight, and platform cars as may be demanded by, and required to, transact all business presented to be done on the same, at the several depots and station-houses along the line of said road, and to run at least one train of passenger and freight cars each way every day for the term of twenty years from the completion of said road; that they will erect as many depots, freight-houses, and station-houses—not less than three in WayneCounty—as may be necessary for the convenience of public business, with sufficient side-track for such purpose, for and in consideration of the covenants and agreements on the part of the party of the first part to be performed. It is covenanted and agreed to and with the said party of the first part by the said party of the second part, that they will pay or cause to be paid to the said party of the first part the sum of five hundred thousand dollars, which it is agreed by the said parties hereto may be paid or liquidated by the conveyance of good and sufficient covenants of warrant*ees* to lands belonging to and situate in the county of Wayne, at the rate of five dollars per acre for each and every acre so conveyed. It is further covenanted and agreed by the said party of the second part, in consideration of the covenants to be performed by the said party of the first part, that whenever and as often as the said party of the first part shall have built and completed the grade, including the masonry and bridging, on any three miles of the said railroad in Wayne County, then the said party of the second part agrees and hereby covenants that they, the said party of the second part, shall, thereupon, immediately pay to the said party of the first part the sum of twelve thousand five hundred dollars, which said sum may be paid or liquidated in lands belonging to and laying in Wayne County, at five dollars per acre, which lands shall be conveyed to the said party of the first part by the said party of the second part by good and sufficient deed in fee-simple, with covenants of warranty; and so on from time to time as the party of the first part shall complete three

miles of said grade in said Wayne County as aforesaid; said party of the second part shall pay to the party of the first part the sum of twelve thousand five hundred dollars, which may be liquidated by land, as aforesaid, until the whole of said grade, culverts, and bridging shall
48 be completed in said Wayne County as aforesaid, and after all of said grade is completed in Wayne County, so on in like manner until the whole grade is completed from the eastern boundary of Wayne to Mt. Vernon, in Jefferson County.

It is further agreed and understood by both the contracting parties hereto that, upon the said party of the first part giving good and sufficient security, to be approved by the said second party, that then, and in that case, the said party of the second part shall pay to said party of the first part the remainder of the aforesaid sum of five hundred thousand dollars, which said sum, as remainder of said five hundred thousand dollars, the said party of the second part may also pay and liquidate in lands belonging to and laying in Wayne County, at five dollars per acre, as aforesaid.

It is further agreed and understood by and between said parties that, in case said party of the first part do not give security and receive said monies in advance of the completion of *the* any part of the superstructure of said road, that the remainder of said monies *so* be paid shall be paid in the following manner, that is to say: Upon the laying down and completion of one mile of railroad in Wayne County, said party of the second part agrees to pay as aforesaid to said parties of the first part six thousand dollars for each and every mile of said road on which the superstructure and iron is laid, as said work progresses, until the completion thereof from the town of Fairfield, in Wayne County, to Mt. Vernon, in Jefferson County, and from the town of Fairfield to the eastern boundary of Wayne County; and, upon completing said superstructure, and the running the first train of cars over said road, from Mt. Vernon, in Jefferson County, to the eastern boundary of Wayne County, then, and in that case, the party of the second part shall immediately pay to the party of the first part the remainder of said five hundred thousand dollars, which may be paid in county lands at five dollars per acre, as aforesaid; and, upon the completion of said superstructure and grade, and the running of the first train of cars over the said road as aforesaid, the said party of the second part covenants and agrees, after the using of all due diligence by S. J. R. Wilson, agent of the State of Illinois on the part of Wayne County, to collect from the United States the amount due said county of Wayne, either in land warrants or money for lands entered at the United States land office after the act of Congress approved on the twenty-eighth day of September, A. D. 1850, that they will transfer and pay over the same to the said party of the first part, after deducting therefrom an amount sufficient to pay the expenses of selecting and surveying the lands *imm*uring to said county under said act of Congress, and deducting all reasonable charges and expenses of taking proof as to the character of said lands, and the title of said county thereto, and collecting said monies.

It is further agreed and understood by and between said parties that, in case the said party of the second part shall, as the said monies or any portion thereof fall due, pay or liquidate the same in lands belonging to and laying in said Wayne County, then and in that case the mode of selecting said lands shall be as follows: The said party of the first part shall select one-half of said tracts, and the party of the second part shall select the other half.

It is further covenanted and agreed by the said party of the second

part that they will procure and cause to be conveyed to the party of the first part a right of way in Wayne County one hundred feet wide, on such line of location as may be adopted by said party of the first part, so far as can be obtained by donation or purchase; and
49 in case the owner on any part of said line will not donate or voluntarily sell the same, and the same is taken by condemnation, the said party of the second part will pay all damages, expenses, and costs of condemnation, and save and keep said party of the first part free from expense or costs on account of the same.

And the said party of the second part further covenants and agrees to procure in like manner, by donations, purchase, or condemnation, and alike free from expense to the said party of the first part, a quantity of ground of not more than three acres at every station for depot purposes, which said quantity may be laid off in such form as the said party of the first part shall choose and direct.

And it is further agreed and understood by the said parties hereto that any and all detentions in the prosecution of said road to completion through Wayne County, occasioned by delay in procuring the right of way and the assignment of the charter for said railroad on the part of the said party of the second part, or a non-ful/fil'ment on their part of any portion of this contract, shall be held as an extension of time for the completion of said road.

It is further agreed and understood between the said parties that if the said party of the first part shall fail to complete their contract with the party of the second part, by refusing or neglecting to finish, complete, or operate said railroad, then all work and superstructure made or caused to be made by them shall revert to the party of the second part, together with the franchises and right of way.

It is further understood and agreed by the contracting parties hereto that, in case the parties of the second part shall desire to have the time of commencing the work on said road extended for any time not exceeding one year, *that* then, and in that case, the party of the first part hereby covenants and agrees that the time of commencing said work shall be delayed for any time not exceeding one year, by the party of the second part giving to the party of the first part thirty days' notice before the expiration of ninety days from the date of this contract.

It is further agreed by the contracting parties hereto that the parties of the first part are to accept and receive from the parties of the second part any lands in Wayne County which the party of the second part shall convey by good and sufficient deed, with covenants of warran*tee*, as a compliance of the aforesaid contract to convey land.

It is further agreed by the said party of the first part that they will erect one sufficient depot on said railroad within six hundred yards of the court-house in Fairfield, the county-seat of Wayne County, with sufficient depot buildings, station-houses, side-track, and one suitable and convenient depot east of the Little Wabash, and west of the Skillet Forks in said county of Wayne.

It is further agreed between said parties that the parties of the first part shall, twenty days before presenting their claims to the party of the second part for any portion of the monies which may be due the parties of the first part on the aforesaid contract, notify the party of the second part of their intention, and of the amount which will be due.

And it is further agreed and understood between the said contracting parties that, in the event of the said party of the first part completing and running the cars on the railroad from Mt. Vernon, in Jefferson

County, to Fairfield, in Wayne County, by the twenty-fifth of December, A. D. 1859, then and in that event the said party of the second part will, in addition to the said amount above contracted to be paid, convey to the said party of the first part, all the lands that may belong to the said county of Wayne, after deducting the amount of one hundred thousand acres, which said lands are to be conveyed after the completion of said railroad from the eastern boundary of Wayne County to Mt. Vernon, in Jefferson County.

It is further agreed by said contracting parties that, in the event of said railroad running over any of the lands belonging to either of said parties, they shall grant a free right of way over the same without charge or cost.

ISAAC T. VANDOOZER, [SEAL.]
Witness: By B. L. VOORHEES, *Atty.*
GEO. G. ROCKWOOD. N. A. SMITH, [SEAL.]
Witness: By B. L. VOORHEES, *Atty.*
R. L. BOGGS. B. L. VOORHEES, [SEAL.]
Parties of the first part.
S. J. R. WILSON, [SEAL.]
THOMAS M. SCOTT, [SEAL.]
County Court.

Continuation of the foregoing agreement.

It is further agreed by the parties of the first part that if the parties of the second part raise by mortgage of the county lands one hundred and fifty thousand dollars, to be paid to the parties of the first part in the same proportion as the land, *i. e.*, as fast as the work progresses, at the rate of $5 per acre, then the parties of the first part will not ask any further payment from the county until they run a train of cars from Mt. Vernon to Fairfield; then the parties of the second part shall deed, or cause to be deeded, to the parties of the first part the proportion of the land called for in the contract.

It is further agreed by the parties of the first part that if money is raised by mortgage on the county lands by the parties of the second part, that they of the first part shall receive the lands with the encumbrance thereon, and to be cleared by them without additional expense to the county.

Provided, that all monies raised on said lands is for the use, and is paid to the parties of the first part.

Fairfield, Dec. 27th, 1858.

I. F. VANDEUZER,
By B. L. VOORHEES, *Atty.*
N. A. SMITH,
By B. L. VOORHEES, *Atty.*

Contract continued.

It is further agreed by the said party of the first part that they will, sixty days before applying for any payments, in the event that lands have to be sold by said county court to make payments on this contract, select one-half of the lands so to be sold, and give the county court notice thereof, and shall bid for each tract of such land ($5) five dollars per acre, and said second parties agree that if any of said lands shall sell for more than five dollars per acre, the said first parties shall be entitled to the excess over that sum.

I. T. VANDUZER,
By B. L. VOORHEES, *Atty.*
N. A. SMITH.
B. L. VOORHEES.

51 *Order of Wayne Co. modifying supplemental contracts.*

December special term, A. D. 1858.

The following order was passed:

Ordered, That so much of the supplemental contract made with Vanduson, Smith & Co., as contemplates the mortgaging one hundred thousand acres of the county lands as collateral security for the payment of $200,000, be, and the same is hereby, rescinded and revoked; and be it further ordered, that Samuel J. R. Wilson, one of the members of this court, be, and he is hereby, authorized and required to proceed forthwith to the city of New York for the purpose of carrying into effect the foregoing order.

Assignment of contract of Jefferson & Wayne Co's.

This agreement, made this 12th day of September, A. D. 1859, by & between J. T. Vanduzen, of Versa'les, Ills.; B. L. Voorhies, of St. Louis, Mo.; & N. A. Smith, of Troy, N. Y., known under the name & style of Vanduzen, Smith & Co., parties of the first part, & the Mount Vernon Railroad Company, a corporation in the State of Illinois, parties of the second part, witnesseth:

The parties of the first part, for considerations hereinafter mentioned, & for one dollar lawful money of the United States, to them in hand paid by the parties of the second part, the receipt thereof, which is hereby acknowledged, doth bargain, grant, sell, convey, & assign to the parties of the second part all their right, title, & interest in two contracts made and entered into by and between the counties of Jefferson & Wayne, in the State of Illinois, & their legal representatives & J. T. Vanduzer, B. L. Voorhies, & N. A. Smith, of towns & States as aforesaid, under the name and style of Vanduzer, Smith & Co.; also, all claims to any & all lands, monies, materials, & personal property which may hereafter become due to them under said contract; also, all personal property now belonging to the said firm—horses, cattle, mules, wagons, carts, harness, working tools of every description now in use in the construction of said railroad; also, all work finished and unfinished, ties, timber, &c., now in use & ready for use on the said road.

They also further agree to pay all debts & demands now due against said firm for the prosecution of said works, except the monies due N. A. Smith, (which debt is for the aforesaid corporation to pay,) & to convey, or cause to be conveyed, $200,000 of the capital stock of the said corporation to Ira Hinsey, of the city & State of N. Y., in accordance with a contract & resolution of said company & its board.

The parties of the second part, in & for the considerations above mentioned, do agree to give the parties of the first part all the capital stock of the said corporation, $1,000,000, & 200 of their construction bonds of $1,000 each, & to procure their release from the counties of Jefferson & Wayne from further fulfilling of said contract.

In witness whereof the parties of the first part have affixed their hand & seal, & the parties of the second part, through their pres. & treasurer, have affixed their official seal & signatures the day and year before mentioned.

B. L. VOORHEES, [ ]
Atty. for J. T. Vanduzen.

In presence of—
GEO. G. ROCKWOOD.

B. L. VOORHEES, [ ]
N. A. SMITH, [ ]

I presence of—
GEO. G. ROCKWOOD.

Z. CASEY, *Pres.*
N. A. SMITH, *Treas.*

52 *Certified copy of mortgage.—Exhibit A to bill.*

County court to Isaac Seymour.

This indenture, made this twentyieth day of April, in the year of our Lord one thousand eight hundred and fifty-nine, between Samuel J. R. Wilson, judge, and J. Thomas M. Scott, associate judges, of the county court of the county of Wayne, in the State of Illinois, parties of the first part, and Isaac Seymour, of the city and State of New York, banker, trustee, as hereafter mentioned, party of the second part, witnesseth:

Whereas the Congress of the United States duly passed an act, approved September the twenty-eight', one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits, and in pursuance thereof the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for all the swamp and overflowed lands within its limits, to be *situated* under the direction of the commissioners of the land office;

And whereas the legislature of the said State of Illinois passed an act, approved by the governor of said State on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," which said act authorized the appropriation and disposal of said lands for such purposes as may be deemed expedient by the court or county judges;

And whereas the legislature of the said State of Illinois passed an act, approved by the gove'nor of said State on the fifteenth day of February, one thousand eight hundred and fifty-five, entitled "An act to incorporate The Mount Vernon Railroad Company," whereby all such persons and corporations as shall become stockholders under the provisions of the said act, and their successors, were duly incorporated into a body politic and corporate under the name of The Mount Vernon Railroad Company, and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within the said county of Wayne, in aid of the construction and maint*ai*nance of the said railroad, as they deem best for the public interest of said county;

And whereas, at a special term of the said county court of the county of Wayne, held on the 28th day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the same court, whereby a special election was ordered and directed on the fifth day of November, one thousand eight hundred and fifty-five, to be held for the purpose of taking the sense of the qualified voters of the county upon the mortgaging that portion of the said overflowed and swamp lands hereinafter described, for the purpose of aiding in the construction and maint*ai*nance of the said The Mount Vernon Railroad; and the said county *county* court did then and there order public notice of such special election to be given by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did prepare a proposition containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road, and did cause the said propositions to be duly printed at large as an election ticket, and presented to the said qualified voters of said county, to be used at such

53 election in the words and figures following, to wit: "For appropriating the swamp-lands of Wayne County as a bonus to any company for building a railroad through said county;" "Against the same." And the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions of said charter and the laws of the said State of Illinois, and the returns thereof made, canvassed, and published in all respects as other county elections are required to be in and by the said laws;

And whereas the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "Yea" upon the said several printed propositions or tickets cast by them at the said election; and whereas, upon the returns of said special election being duly made, canvas ed, and published as aforesaid, the county court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order and adjudge and determine to execute a mortgage in conformity to such proposition or plan, and to the provision of this instrument, to the parties of the second part at trustees upon the land hereinafter described, for the purpose of aiding in the construction and maintainance of the said Mount Vernon Railroad, which said order was duly made in open court on the twentieth day of April, one thousand eight hundred and fifty-nine;

And whereas by virtue of the said several acts and proceedings the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintainance of the railroad of the said Mount Vernon Railroad Company, and the said parties deem it best for the public interest of the said county of Wayne that the lands hereinafter described should be mortgaged to the party of the second part, trustee and commissioner, duly appointed and selected by both the said parties of the first part and the said the Mount Vernon Railroad Company, upon the terms and conditions particularly set forth;

And whereas the said the Mount Vernon Railroad Company has deemed it advisable to provide for the issue and disposal, now and hereafter, of its construction-bonds for the purpose of rais'ng funds, from time to time, for the construction and completion of the railroad, and for the equipment thereof, and the expenses of organizing and operating the same, and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of such construction-bonds and obligations, in the just and full sum in the ag'regate of eight hundred thousand dollars, secured to be paid by their four hundred construction-bonds or obligations of and for five hundred each, and by their six hundred construction-bonds or obligations of and for one thousand dollars each, to the extent of eight hundred thousand dollars in the ag'regate, to bear date on the first day of , one thousand eight hundred and fifty-nine, and be payable in fifteen years from the date thereof, which will be in the year one thousand eight hundred and seventy-four, at the Bank of North America, in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annual'y at the Bank of North America, in said city of New York, on the first day of May and November, in each year, to be secured hereby; all which bonds are to have warrants for the payments of the interest thereon attached, and to be in the form following, the respective number and amounts thereof being omitted:

54 "The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer one thousand dollars, which said company hereby promises to pay on presentation of this bond hereof at the Bank of North America, in the city of New York, on the first day of May, one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid in presentation of the proper interest-warrants hereto annexed, at the said Bank of North America.

"This bond is one of a series of four hundred, of five hundred dollars each, and 600 of 1,000 each, of like term and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and the completion of the said railroad, and the expenses incident thereto. Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

"In witness whereof the said the Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and its interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed, at the , in the State of , this day of , one thousand eight hundred and fifty-nine."

Which said construction-bonds or obligations are primarily secured by this indenture, and the lands herein described, and the avails thereof, are to constitute a primary fund for the payment of the principal and interest of the said bonds.

Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises and of one dollar to them severally paid by the parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, remise, release in full of, convey, and confirm to the party of the second part, his successors, and the survivors of them, and the heirs and assigns of such survivors, forever, all and singular the land and premises situate and lying and being in the county of Wayne, and the State of Illinois, bounded and described as follows, that is to say:

Northeast quarter, southwest quarter, southeast of northwest quarter, all in section three; west half of northeast quarter, southeast of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter, and south half of southwest quarter, all of section four; southeast quarter, north half of east quarter, west half of southwest, southeast of southwest of section five; north half of northwest quarter, north half of northeast quarter, southwest of northeast quarter, northeast of southeast of section eight; west half of northeast quarter, northwest quarter, northeast of southwest, east half of northeast quarter, northwest of southwest quarter, southeast quarter of section nine; southwest of southeast, west half of southeast of section
55 ten; west half of northeast quarter, west half and southeast quarter of section fifteen; northeast of southwest quarter, north

half, east half of southeast, northwest of southeast quarter of section twenty-two; southwest of northwest quarter, southwest of southwest quarter of section twenty-three; east half of southeast, west half of southwest, northwest of the southeast quarter of section twenty-five; south half of northwest quarter, west of northwest quarter, east half of southwest quarter, and southeast quarter of section twenty-six; west half of southwest quarter, southeast of southwest quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter, southeast quarter, northeast of southwest quarter, and west half of northwest quarter of section thirty-five; northwest of northwest quarter, west half of southwest, northeast of northeast quarter of section thirty-six, all of township one south, range five east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half of northwest quarter of section two; east half of northwest quarter, northwest of southeast quarter, sout'east of northwest of section five; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter of section seven; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, and south half of section eight; southeast of northeast quarter, southeast quarter of section ten; all of section eleven; southeast of northwest quarter, northeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter, southwest quarter, east half of southwest quarter, west half of the southeast quarter of section twelve; north half of northeast quarter, southwest of northeast quarter, west half, and southeast quarter of section thirteen; all of section fourteen; east half of southwest quarter, south half of northwest quarter of section fifteen; all of section seventeen; northwest of northeast quarter of section eighteen; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section nineteen; all of section twenty; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section twenty-one; north half, northeast of southwest quarter, west half of southwest quarter, east half of southeast quarter of section twenty-two; all of section twenty-three; all of section twenty-four; all of section twenty-five; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twenty-six; northeast quarter, southwest of southeast quarter, west half of northwest quarter of section twenty-seven; all of section twenty-eight; all of section twenty-nine; southwest southwest quarter, east half of northeast quarter, east half southeast quarter of section thirty; northeast quarter, south half southwest quarter of section thirty-one; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of southwest quarter, west half of northwest quarter, east half northwest quarter, east half of southwest quarter, northwest of southwest quarter, southwest of southwest quarter of section thirty-three; all of section thirty-four; all of section thirty-five; all of section thirty-six, of township two south, of range six east. All of section one; all of section two; east half no'thwest quarter, east half southwest quarter, northwest of southwest quarter of section three;
56 southeast quarter, northeast of southeast quarter, west half of southeast quarter, east half of northwest quarter of section four; east half of southeast quarter, west half of southeast quarter of sec-

tion six; north half southeast quarter, north half of southwest quarter, southeast of *of* southwest quarter of section seven; northeast quarter, southeast of northwest quarter, east half of southeast quarter, northwest of southeast quarter of section ten; southeast quarter, west half, northwest of southeast quarter of section eleven; north half, north half of southwest quarter, southeast of southwest quarter, north half of southeast quarter, southwest of southeast quarter of section twelve; northeast of northwest quarter, west half of northwest quarter of section fourteen; southeast quarter, east half of northwest quarter, northwest of southeast quarter, east half of southwest quarter of section eighteen, of township three, of six east. West half of northeast quarter, west half of southeast quarter, southeast of southeast quarter of section two; *all of section two;* all of section three; all of section four; all of section five; all of section six; all of section seven; all of section eight; all of section nine; all of section ten; all of section eleven; southwest of northwest quarter, south half of section twelve; all of section thirteen; all of section fourteen; all of section fifteen; all of section seventeen; east half, east half of northwest quarter of section eighteen, of township three south, of range seven east. Southwest of southwest quarter of section one; west half of northeast quarter, northwest quarter, south half of section two; north half, northeast of southeast quarter of section three; northeast of the southwest quarter, north half of section four; north half, west half of southwest quarter, northwest of southeast quarter of section five; northeast of the northwest quarter, north half of northeast quarter of section seven; northeast of northwest quarter, west half of northwest quarter of section eight; east half of section eleven; all of section twelve; northeast quarter, south half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southwest quarter, southwest of southeast quarter of section thirteen; northwest of northwest quarter of section twenty-three; northwest quarter, northeast of southwest quarter of section twenty-four, of township one south, range eight east. East half of northwest quarter, southwest of northwest quarter, west half of southwest quarter of section six; southeast of northwest quarter, northeast of southwest quarter, west half of southwest quarter; west half of southeast quarter of section seven; sout'east of southwest quarter, southwest of southwest quarter of section eight; northeast of northwest quarter, west half of northwest quarter, west half of southwest quarter of section seventeen, of township three south, range eight east. Southwest quarter, west half of southeast quarter, southeast of southeast quarter of section one; south half of section two; southeast quarter, southeast of southwest quarter of section three; west half of southeast quarter of section six; the southeast of northeast quarter, west half of northeast quarter, west half southeast, one-half southeast quarter of section seven; west half of northwest quarter of section eight; east half, east half of southwest quarter, northeast of northwest quarter of section ten; all of section eleven; north half, west half of southwest quarter, northwest of southeast quarter of section twelve; southwest of southwest quarter, east half of southwest quarter, southwest of southeast quarter of section thirteen; all of section fourteen; east half of southeast quarter, southwest of southeast quarter of section fifteen; west half of northwest quarter, south half of section seventeen; all of section eighteen; north half, southeast quarter of section nineteen; all of sec-
57 tion twenty; west half of northeast quarter, southeast of northeast quarter, west half, south east quarter of section twenty-one; east half, south half of northwest quarter, *northwest quarter* of section

twenty-two; northeast quarter, west half, east half of southeast quarter, southwest of southeast quarter of section twenty-three; west half of northeast quarter, west half, west half of southeast quarter of section twenty-four; northwest of southeast quarter, northwest quarter, north half of southwest quarter, west half of northeast quarter of section twenty-five; all of section twenty-six; all of section twenty-seven; all of section twenty-eight; west half of northeast quarter, southeast of northeast quarter, west half, southeast quarter of section twenty-nine; north half of northeast quarter of section thirty; all of section thirty-two; north half, west half of southwest quarter, northwest of southeast quarter of section thirty-three; northeast quarter, northeast of northwest quarter, west half of northwest quarter, east half of southeast quarter of section thirty-four; west half of northwest quarter, northwest of southwest quarter, east half of southwest quarter, southeast quarter of section thirty-five; south half, *of* southwest of northeast quarter, southeast of northeast quarter of section thirty-six, township one south, range nine east. West half of northeast quarter, northeast quarter, northwest quarter of section one; all of section two; northwest quarter, east half of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section three; east half of northeast quarter, southwest of northeast quarter, west half southeast quarter, northeast of southeast quarter of section four; east half of section five; southwest of southwest quarter of section eight; west half of northwest quarter of section nine; east half of northeast quarter, southwest of northeast quarter, northwest quarter, east half of southwest quarter, southeast quarter of section ten; northeast quarter, west half of section eleven; west half of northwest quarter, northeast of northwest quarter, west half of southwest quarter, southeast of northwest quarter section twelve; northeast of northwest quarter, northwest of northwest quarter of section thirteen; northeast of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section fourteen; northeast quarter, west half of section fifteen; west half of northeast quarter, northeast of northwest quarter, southeast of southeast quarter of section seventeen; east half of northeast quarter, east half of southeast quarter of section twenty; northeast quarter, west half of section twenty-one; northeast of northwest quarter, west half of northwest quarter of section twenty-two; southeast of southwest quarter of section twenty-six; west half southwest quarter, southeast of southwest quarter of section twenty-seven; south half of northeast quarter, west half southeast quarter of section twenty-eight; east half of southwest quarter, east half, southwest of southwest quarter of section twenty-nine; southeast of southwest quarter, west half of southwest quarter, southwest of northwest quarter, south half of southeast quarter of section thirty; west half of northwest quarter, southeast of northeast quarter of section thirty-one; east half, southwest of northwest quarter, north half of southwest quarter, southeast of southwest quarter of section thirty-two; all of section thirty-three; all of section thirty-four; west half of southwest quarter, southeast of southwest quarter, northeast of the northwest quarter, west half of northwest quarter of section thirty-five; southwest of northeast quarter, east half of southeast quarter of section thirty-six, township two south,
58 range nine east. East half northeast quarter, southwest of northeast quarter, south half of southwest quarter, southeast quarter of section one; west half of northeast quarter, southeast quarter, west half of section two; west half northeast quarter, south half of

southeast quarter of section three; east half, east half northwest quarter, southeast of southwest quarter of section four; northeast of northeast quarter of section five; east half of southwest quarter, southwest of southeast quarter of section seven; northeast of southwest quarter, southwest of southwest quarter of section eight; east half of southwest quarter, east half, east half of northwest quarter of section nine; all of section ten; northwest quarter, east half, west half of southwest quarter of section eleven; all of section twelve; all of section thirteen; south half of northeast quarter, west half of northwest quarter, southeast of northwest quarter, south half of section fourteen; all of section fifteen; northwest of northwest quarter of section seventeen; north half of northeast quarter of section eighteen, of township three south, range nine east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half northwest quarter of two; east half of southwest quarter, northwest of southeast quarter, southeast of northwest quarter of section five; northeast of southeast quarter of section six; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, southeast quarter of section seven; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, southwest quarter, southeast quarter of section eight; southeast of northeast quarter, southeast quarter of section ten; all of section eleven; northeast of northwest quarter, southeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter *of* southwest quarter, east half of southeast quarter, west half of southeast quarter of section twelve; north half of northeast quarter, southwest of northeast quarter, southeast, west half of section thirteen; all of section fourteen; east half southwest quarter, south half of northwest quarter of section fifteen; all of section seventeen; northwest of northeast quarter of section eighteen; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section nineteen; all of section twenty; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of twenty-one; north half, northeast of southwest quarter, west half of southwest quarter of section twenty-two; all of section twenty-three; all of section twenty-four; all of section twenty-five; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twenty-six; northeast quarter, east half of southeast quarter, southwest of southeast quarter, west half of northwest quarter, southeast of section twenty-seven; all of section twenty-eight; all of section twenty-nine; southwest *of southwest* of southwest quarter, east half of northeast quarter, east half of southwest quarter of section thirty; northeast quarter, south half northwest quarter of section thirty-one; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of northwest quarter, west half of northwest quarter of section thirty-two; east half, east half of southwest quarter, northwest quarter, northwest of southwest quarter, southwest of southwest quarter of section thirty-three; all of section thirty-four; all of section thirty-five; all of section thirty-six, of township two south, of range six east.

59 West half of northeast quarter, west half, west half of southeast quarter, southeast of southeast quarter of section two; all of section one; all of section three; east half of southeast quarter, southwest of southeast quarter, east half of southwest quarter, east half of

northeast quarter of section four; east half of northeast quarter, northeast of northwest quarter, east half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southeast quarter of section seven; all of section ten; all of section eleven; all of section twelve; all of section thirteen; all of section fourteen; east half of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section fifteen; south half of northeast quarter of section twenty-two; east half, east half of northwest quarter, northwest of northwest quarter, northeast of southeast quarter, southeast of southwest quarter of section twenty-three; all of section twenty-four; all of section twenty-five; southeast quarter, southeast of northwest quarter, southwest of southwest quarter, southeast of southwest quarter, northeast of southwest quarter, of section twenty-six; northeast of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section thirty-four; all of section thirty-five; all of section thirty-six, township one north, of range nine east. South half, east half of northwest quarter, northwest of northwest quarter, east half of southwest quarter of section nineteen; west half northwest quarter, south half of section twenty; east half of northeast quarter, east half of southeast quarter, southwest of southeast quarter of section twenty-three; northeast quarter, west half of section twenty-four; west half, west half of southeast quarter, southeast of southeast quarter, northeast of southeast quarter of section twenty-five; east half of northeast quarter, east half of northwest quarter, northeast quarter of section twenty-six; southeast of northeast quarter, southeast quarter, west half section twenty-eight; west half of northeast quarter, northwest, northeast of southeast quarter, south half of southeast quarter, northwest of southwest quarter of section twenty-nine; east half of northeast quarter, northwest of northeast quarter, northeast of southeast quarter, east half of northwest quarter, north half of southwest quarter, southwest of southeast quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter of section thirty-two; northwest quarter, east half northeast of southwest quarter of section thirty-three; north half, northeast of southeast quarter, west half of southeast quarter, southwest quarter of section thirty-four; west half of southwest quarter, southeast of southwest quarter of section thirty-five; all of section thirty-six, of township two north, of range nine east. Southwest of northwest quarter of section one; southeast of southeast quarter of section two; southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section eleven; southeast of northwest quarter, west half of northeast quarter of section fourteen; southeast of southeast quarter, west half of southwest quarter, southeast of southwest quarter of section twenty-six; northwest of northwest quarter, northwest of northeast quarter of section thirty-five, township one north, range five east. Southwest of northwest quarter, south half of southwest quarter of section thirty-six, township two north, range five east. East *east* half of lot one northeast quarter of section six southeast of southeast quarter of section thirteen; southeast of northwest quarter, south half, northeast quarter of section twenty-four; west half of northeast quarter of section twenty-five; east half of northwest
60 quarter of section thirty-five, township one north, range six east. Southeast of southeast quarter of section nineteen, township two north, range six east. East half southeast quarter, southwest of southeast quarter of section one; northwest of northeast quarter, east half

of northeast quarter of section twelve; northwest quarter of section nineteen; southeast of northwest quarter, southwest of northeast quarter, west half of southeast quarter of section twenty-one; southwest of southwest quarter of section twenty-seven; east half & southwest of northeast quarter of section twenty-eight; southwest of northeast quarter of section thirty-five; southeast of northeast quarter of section thirty-six, township one north, range seven east. Southeast of southwest quarter of section twenty-one; north half of southeast quarter, west half of southeast quarter of section twenty-two; southeast of southeast quarter, southeast of southwest quarter, northwest of southwest quarter of section twenty-three; southwest of northwest quarter, west half of southwest quarter, southeast of southwest quarter of section twenty-four; southwest of northwest quarter, southwest of southeast quarter, northwest of southwest quarter of section twenty-five; northeast of northeast quarter, northeast of southeast quarter of section twenty-six; west half of northeast quarter, southeast of northeast quarter, northeast of southeast quarter of section thirty-six, township two north, range seven east. Southeast of southeast quarter of section five; lot one northwest (containing sixty-six acres) section six; northeast of southwest quarter section six; lost two northwest quarter, (containing fifty-two acres,) southwest of northeast quarter section seven; southeast of southwest quarter, southwest of southwest quarter of section eight; southwest quarter of section twenty-two; southeast of southeast quarter, southwest of southwest quarter of section twenty-six; northwest of northwest quarter of section twenty-seven; northeast of northwest quarter, east half of northeast quarter, section twenty-eight; all of section thirty-four; west half of northwest quarter, southeast of northwest quarter, southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter section thirty-five; southwest quarter section thirty-five; northwest of northwest quarter of section thirty-six, township one north, range eight east. Northwest of northeast quarter, northwest quarter, east half of southeast quarter of section thirty-one, of township two north, range eight east. Southwest of northwest quarter, east half southwest quarter, northwest of southwest quarter of section six; southwest of northwest quarter, northeast quarter, northwest quarter of southeast quarter, southwest of southeast quarter, east half of southeast quarter of section ten; north half, west half of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section eleven; east half, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section twelve; northwest of northeast quarter, north half of northwest quarter of section thirteen; northeast quarter, east half of northwest quarter, northwest of northwest quarter of section fourteen; northwest of northeast quarter, northwest quarter, northeast of southwest quarter, southwest of southeast quarter, west half of southwest quarter, southeast of southwest quarter, southwest of northwest quarter, south half of section ; east half of southeast quarter of section twenty-nine, township two south, range five east. The whole containing one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred*ths* acres preempted, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging o*n* in any wise appertaining, and the reversion and reversions,
61 remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, at law or in equity, of the said parties of the first part of, in, and to the same, and each and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the lands and premises hereby granted or intended so to be, and each and every part and parcel thereof, with the appurtenances, unto the said party hereto of the second part, his successors and assigns, forever, as joint tenants, and not as tenants in common, for the uses and purposes in this indenture set forth and declared, and subject to the provisions and requirements of the before-mentioned act of Congress of the United States and the act passed by the legislature of the State of Illinois, incorporating the said The Mount Vernon Railroad Company; and subject also to the possession, control, and management of the party of the second part so long as said construction bonds or obligations shall remain unforfeited by the proper performance of all the stipulations thereof: provided always, and these presents are upon the express condition, that if the said The Mount Vernon Railroad Company shall well and truly pay, or cause to be paid, to the holders of the said construction bonds or obligations, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon at the times and in the manner as hereinbefore provided, according to the true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease, nunc, and be utterly void.

And this indenture further witnesseth that these presents are made, executed, and delivered, upon the terms, conditions, and agreements following, that is to say:

First. That the one hundred thousand eighteen acres of land granted as aforesaid shall, within months after the date of these presents, be carefully valued and appraised by the said parties of the first part, their officers and agents, and the relative value of each peace or parcel land established for the purpose of division and *attenement* thereof into four classes, of the following number of acres and valuations, that is to say: 1st. First class, consisting of lands of special value, as coal fields, quarries of slate, mineral, &c., from peculiarity of location, as being near town or village, acres, minimum valuation, per acre. 2d. Second class of lands, of superior agricultural qualities and location, acres, minimum valuation, per acre. 3rd. Third class of lands, of high agricultural qualities, almost universal in the State of Illinois, acres, minimum valuation, per acre. 4th. Fourth class, of the lowest agricultural qualities, within fifteen miles of the road or branches, but all capable of cultivation, acres, minimum per acre; formi'g an ag'regate valuation per acres of ; all of which the said parties of the first part, with as little delay as practicable, shall certify and declare to the said party of the second part, by proper lists and sc'edule, under seal, with such description as shall enable the party of the second part to ascertain and establish the precise location, position, and boundaries of each and every piece or parcel of said land, and the class to which the same belongs, and the price or sum for which the same be sold or conveyed; which price or sum may be varied or changed from time to time at the pleasure of said parties of the first part: provided, that the selling price of any piece or parcel of land shall, in no case, be less than the minimum valuation of the same
62 hereinbefore given, and by the class to which it is allotted, until the aggregate sum actually realised and received in money and by the surrender of construction bonds or obligations, as hereinafter provided, shall amount to the aggregate valuation of any of the classes above set forth and declared, when the said parties of the first part may instruct and empower the said party of the second part to sell and

convey any re'ining pieces or parcels of land of said class, at such price as they may deem proper, even below the minimum valuation of the class; but not to alter or change the mode of selling in the appropriation of the proceeds and receipts from such sale.

Second. That the said party of the second part having received from the said parties of the first part such said list, sc'edule, allotment, valuations, and selling prices, shall and will grant, bargain, sell, and convey to all persons, bodies politic or corporate, applying for the purchase of the land and premises above mentioned, making extended*ing* payment therefor at prices not less than the selling rates established by the said parties of the first part, and shall require in payment the surrender of construction bonds or bond nearest in amount to the actual purchase-money and consideration of the conveyance, and the payment of the residue of said purchase-money in cash; but in no case shall any piece or parcel of land be sold or conveyed by the said party of the second part without the surrender and consequent discharge of said construction bonds or bond. And whenever any purchaser may tender construction bonds or bond exceeding in amount the purchase-money of the land for which application is made, the party of the second part may receive the same and pay the excess (provided the same does not exceed two hundred and fifty dollars in any one case) in money to the purchaser, the intent thereof being thereby to anticipate the payment of said construction bonds or bond by the sale and conveyance of said land in manner aforesaid.

3rd. Third. The said party of the second part shall and will cancel and discharge every construction bond or obligation, and the interest warrents therein, which he may receive in payment for land and as part or the whole consideration of each deed or sale, by defacing the seal of the corporation, in receipt thereof, and will make or *or* cause to be made in or upon the face thereof a note or memorandum with proper description of the land sold and conveyed, with the date of the conveyance for which the same has been received, and cancelled in such manner and form as will enable the parties of the first part to trace and follow the appropriations of all the said construction bonds.

Fourth. That the said party of the second part shall and will set forth and declare in each and every deed of conveyance the true amount of the purchase-money of the land and premises conveyed or intended to be conveyed thereby, and the part thereof for which a bond or bonds may have been received, with the number and amount thereof; and also, the sum actually paid in cash for the residue and remainder of said purchase-money; and also, whenever a bond or bonds exceeding the amount of the purchase-money may have been received in payment thereof, the amount in cash actually refunded to the purchaser or holder of such bond or bonds for such excess.

Fifth. That the interest warrents of said construction bonds or obligations becoming due and payable during the progress of the work of constructing, and up to inclusive of, & the warrents for the semi-annual*ly* interest becoming due and payable next after the completion and actual use of the main railroad and branches shall be paid
63 from and out of the proceeds and avails of the said construction bonds or obligations as part of the cost of said road and branches, but that all interest warrants becoming due and payable thereafter when the said railroad and branches shall be put in operation shall be paid from and out of the receipts and income from the use and operation of the road and branches, unles' the same be inadequate thereto, in which case any unpaid ballance of the same shall be paid from the proceeds and avails of the said bonds.

Sixth. That the said party of the second part shall and will cede set aside, and preserve *all* interest fund, as further and collateral security for the punctual payment of all the interest warrants of the said construction bonds or obligations at the time when the same severally becomes due and payable, by the appropriation of the proceeds of sales of twenty thousand acres of the lands above described, set aside for this purpose and held by the said trustee free from incumbrance.

Seventh. That the said party of the second part shall and will manage and invest the interest fund in such manner as will render the same at all times readily convertible into cash, to prevent any delay in the payment of the interest should the provisions heretofore made and declared be at any time inadiquate for that purpose, and for the payment of any deficiency will use and appropriate the said interest fund in following manner: First, the current interest of the interest fund; second, the proceeds of the sales of the above-described lands.

And this indenture further witnesseth that, the said parties of the first part, for themselves and their successors, do covenant and agree that if default shall be made in the payment of the interest upon the said construction bonds or obligations, so that a sum equal to one year's interest of the whole amount of the said construction bonds or obligations already issued and secured by these presents, or that if default shall be made in the payment of the principal of said construction bonds or obligations, that then and from thenceforth it shall and may be lawful for the said parties of the second part to enter into and upon and take possession of all and singular the lands and all the premises included or intended to be included in this mortgage.

And further, that the said party of the second part having entered into full possession of all and singular the lands hereinbefore particularly set forth and described, remaining unsold at the time of such entry, if any there be, may proceed to sell and dispose of the same, or so much thereof as shall be necessary for the purpose of paying said principal and interest; and may make such sales of the said premises, each and every of them, and all benefit and equity of redemption of the said parties of the first part therein, at public auction, giving reasonable and public notice of the time and place of said sale in the public newspapers of the State of Illinois, published at Chicago and Springfield, and in two public newspapers of the city of New York; and, as the attorney of the said parties of the first part for that purpose by these presents duly authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in fee-simple, and out of the monies arising from such sale and sales to retain the principle and interest, which shall then be due on said construction bonds or obligations, for the benefit of the holders thereof, together with the cost and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there there shall be) unto the Mount Vernon Railroad Company, its successors and assigns, forever; which sale shall forever be a per-
64 petual bar, both at law and in equity, against the said parties of the first part, their successors and assigns, and all other persons claiming or to claim the premises so sold or any part thereof by, from, or under them.

And it is further provided that if, after the said construction bonds or obligations shall be fully paid, together with all arrears of interest thereon, there shall be any of the above-described lands remaining unsold, or any of the proceeds and avails of the said bonds in the hands of the party of the second part unprovided for, then and in that case said party of the second part shall convey absolutely the said lands, and

shall pay, transfer, and deliver said proceeds and avails to the said the Mount Vernon Railroad Company, its successors and assigns, forever.

And it is here mutually agreed, by and between the parties to these presents, that the said party of the second part, his heirs, executors, or administrators, shall not be answerable for the acts, omissions, or defaults of his attorneys hereinafter referred to, and that he shall be responsible for gross negligence and wil'ful default only.

And it is further agreed that the said parties of the first part, their successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the premises hereinbefore granted by, from, under, or in trust for them, shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, and cause to be made and executed, all and every such farther and other reasonable acts, conveyances, and assurances in the law for better and more effectually vesting and confirming the premises hereby granted, or intend so to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs and assigns, or his or their counsel, learned in the law, shall be reasonably advised, or required.

And it is further provided that the parties of the first part shall, upon the request of the party of the second part, designate and appoint a commissioner, resident of the said county of Wayne, to make and execute conveyances of said land to purchasers thereof, as herein provided, and generally to carry into effect the provisions hereof; and that the said party of the second part may execute and deliver the power of attorney to such commissioner, authorising and empowering *them* duly to make, execute, and deliver in his behalf, as such trustee, deeds and conveyances to the purchasers of such lands as may be proper, and to do such other acts and things as may be necessa'y to carry into effect the provisions of this instrument, and the execution of such conveyance by the said commissioner, when so empowered by the said party of the second part, shall be effectual to confirm and establish in such purchasers, respectively, all of the right, title, interest, and estate of the said party of the second part as fully to all intents and purposes as if the said party of the second part had personally made and executed the same.

In witness whereof the said parties of the first part have herewith set their hands and seals, and the seal of the said county court, the day and year first above written.

[SEAL.] S. J. R. WILSON, *Co. Judge.* [SEAL.]
THOMAS M. SCOTT. [SEAL.]

Signed, sealed, and delivered in presence of—
B. L. VORHEES.

65 STATE OF ILLINOIS, *Wayne County:*

I, J. W. Barnhill, clerk of the county court of said county of Wayne, and State of Illinois, do hereby certify that the above-named S. J. R. Wilson, co. judge, and Thomas M. Scott, associate judge, personally appeared before me and acknowledged that they signed the foregoing mortgage, and for the purpose therein named.

Given under my hand and the seal of said court this the 20th day of April, A. D. 1859.

[SEAL.] J. W. BARNHILL, *Clerk.*

Filed 3rd May, 1859.

R. B. SLOCUMB, *Clerk.*

STATE OF ILLINOIS, *Wayne County, ss :*

I, John L. Handley, clerk of the circuit court and ex-officio recorder within and for the county of Wayne, and State aforesaid, do hereby certify that the above and foregoing is a true and perfect copy of a mortgage given by the county court of Wayne County, Illinois, to Isaac Seymour, of the city and State of New York, as appears from the records in my office.

In witness whereof I have hereunto set my hand and official seal at my office, in Fairfield, this 3rd day of November, A. D. 1870.

[L. S.] JOHN L. HANDLEY, *Clerk.*

(Indorsed:) Filed November 7th, A. D. 1870. J. A. Jones, clk.

Deposition of Richard L. Boggs.

The deposition of Richard L. Boggs, of the county of Wayne, and State of Illinois, a witness of lawful age, produced, cautioned, and sworn and examined upon his corporal oath on the second day of November, in the year of our Lord one thousand eight hundred and seventy, at the office of James McCartney, in the town of Fairfield, in the county of Wayne, and State of Illinois, by me, James McCartney, a notary public of the county and State last aforesaid, by virtue of the notice or stipulation hereto attached, signed by Messrs. Stewart, Edwards, and Brown for Wayne County, authorizing evidence to be taken for certain purposes therein stated.

The said RICHARD L. BOGGS, being first duly sworn by me, as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the plaintiff and the defendant, so far as he should be interrogated, testified and deposed as follows:

By Walter B. Scates, atty. for complainants:

Interrogatory first. Give your name, age, occupation, and place of residence.

Answer to interrogatory first. My name is Richard L. Boggs; my age is 58 years; my occupation is a physician; my place of residence is in Wayne County, Illinois.

Interrogatory second. State how long you have resided in Wayne County, Illinois.

Answer to interrogatory second. I have resided in Wayne County, Illinois, thirty-one years.

66 Interrogatory third. State if you were acquainted with Isaac T. Vanduser, Barnard L. Voorhees, Norman A. Smith, Samuel J. R. Wilson, and Thomas M. Scott.

Answer to 3rd interrogatory. I was acquainted with all of them.

Interrogatory 4th. State if you are a subscribing witness to the contract made on the 19th day of November, A. D. 1858, between Isaac T. Vanduser, Norman A. Smith, and Barnard L. Voorhees, under the name, style, and firm of Vanduser, Smith & Co., and Samuel J. R. Wilson, county judge, and Thomas M. Scott, associate judge of Wayne County, Illinois; and if so, look upon the contract now shown you and hereto attached, marked as "Exhibit A," and state if the signatures thereto subscribed are the signatures of the parties purporting to sign the same.

Answer to interrogatory 4th. I am a subscribing witness to the said contract or agreement, and the signatures thereto were made in my presence, and are the signatures of the parties purporting to sign the same.

Interrogatory 5th. Do you know of the whereabouts of Isaac Seymour, either by common report or otherwise? and if so, state whether he is living or dead, and how you know it.

Answer to interrogatory 5th. By common report, I understand him to have been dead for eight or ten years.

R. L. BOGGS.

Certificate of James McCartney, N. P.

STATE OF ILLINOIS,
Wayne County, ss:

I, James McCartney, a notary public of the county of Wayne, and State of Illinois, before whom the foregoing deposition of Richard L. Boggs, a witness whose name is subscribed to the foregoing deposition, was taken, do hereby certify that, previous to the commencement of the examination of the said Richard L. Boggs as a witness in the suit between John W. Kennicott et al. vs. The Board of Supervisors of Wayne County et al., he was duly sworn by me to testify the truth in relation to the matter in controversy between the said John W. Kennicott et al., complainants, and The Board of Supervisors of Wayne County, Illinois, et al., *are* defendants, so far as he should be interrogated concerning the same. That the said deposition was taken in my office in the town of Fairfield, county of Wayne, and State of Illinois, on the 2nd day of November, A. D. 1870; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Richard L. Boggs, before me, the oath being administered by me at the place and on the day and year last aforesaid.

JAMES McCARTNEY,
N. P. Wayne County, Illinois.

Deed trust. Exhibit B.

Exhibit "B" referred to in foregoing bill.

County court to Isaac Seymour.

This indenture, made this twentieth day of April, one thousand
67 eight hundred and fifty-nine, between Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge, of the county court of the county of Wayne, and State of Illinois, parties of the first part, and Isaac Seymour, of the city of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth *the*—

Whereas the Congress of the United States duly passed an act, approved September the twenty-eighth, one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and, in pursuance thereof, the Secretary of the Interior of the United States caused a patent to be issued to the State of Illinois for all the swamp and overflown

lands within its limits, to be selected under the direction of the commissioners of the land office;

And whereas the legislature of the said State of Illinois passed an act, approved by the governor of said State, on the twenty-second day of January, one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," which said act authorized the appropriation and disposal of said lands, for such purposes as may be deemed expedient by the courts or county judges;

And whereas the legislature of said State of Illinois passed an act, approved by the governor of said State on the fifteenth day of February, one thousand eight hundred and fifty-five, entitled "An act to incorporate the Mount Vernon Railroad Company," whereby all such persons or corporations as should become stockholders under the provisions of the said act and their successors, were duly incorporated into a body politic and corporate under the name of the Mount Vernon Railroad Company; and the parties of the first part were duly authorized and empowered to make such disposition of the swamp and overflowed lands within said county of Wayne, in aid of the construction and maintenance of the said railroad as they may deem best for the public interest of said county;

And whereas, at a special term of the said county court of the county of Wayne, held on the twenty-eighth day of September, one thousand eight hundred and fifty-five, an order was duly made and entered by the said court whereby a special election was ordered and directed to be held on the fifth day of November, one thousand eight hundred and fifty-five, for the purpose of taking the sense of the qualified voters of the county upon the mortgaging that portion of the overflowed and swamp lands hereinafter described for the purpose of aiding in the construction and maintenance of the said The Mount Vernon Railroad; and the said county court did then and there order public notice of such special election to be given, by advertisements, in accordance with the statute laws of said State of Illinois, which said notice was given and published in conformity with the terms and provisions of said order; and the said county court did propose a proposition, containing a brief, clear, and distinct idea of the plan proposed by them for aiding in constructing said road; and did cause the said proposition to be printed at large as an election ticket, and furnished to the qualified voters of said county, to be used at such election, in the words and figures following, to wit: "For appropriating the swamp lands of Wayne County, as a bonus to any company for building a railroad through Wayne County;" "Against the same."

And the said special election was duly held, pursuant to said notice, on the said fifth day of November, one thousand eight hundred and fifty-five, and conducted in all things in conformity to the provisions
68 of said charter and the laws of the said State of Illinois, and the returns thereof made, canvassed, and published, in all respects as other county elections are required to be in and by said laws;

And whereas the said proposition or plan above stated received the highest number of votes and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "Yea" upon the said several printed propositions or ticket cast by them at the said election;

And whereas, upon the returns of the said special election being duly made, canvassed, and published as aforesaid, the said county court of the county of Wayne did adopt the proposition or plan having the

highest number of votes as aforesaid, and did order, adjudge, and determine to execute a mortgage in conformity to such proposition or plan, and to the provisions of this instrument, to the parties of the second part, as trustee, upon the laws hereinafter described for the purpose of aiding in the construction and maintenance of the said The Mount Vernon Railroad; which said order was duly made in open court, on the twentieth day of April, one thousand eight hundred and fifty-nine;

And whereas, by virtue of the said several acts and proceedings, the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands, for the purpose of aiding the construction and maintenance of the railroad of the said The Mount Vernon Railroad Company; and the said parties deem it best for the public interest of said county of Wayne, that the lands hereinafter described should be conveyed to the party of the second part, trustee and commissioner, duly appointed and selected by both the said parties of the first part and the said The Mount Vernon Railroad Company, upon the terms and conditions hereinafter particularly set forth;

*K*now this indenture witnesseth, that the said parties of the first part, in consideration of the premises and of one dollar to them in hand severally paid by said parties of the second part, at or before the *un*sealing and delivering of these presents, the *the* receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, remise, release, enfeoff, convey, and confirm unto the parties of the second part, and the survivors and survivors of them, and the heirs and assigns of such survivors, forever, all and singular the lands and premises, situate, lying, and being in the county of Wayne and State of Illinois, bounded and described as follows, that is to say:

Northeast quarter, southwest quarter, southeast of northwest quarter, all in section 3; west half of northeast quarter, southeast of northeast quarter, northwest quarter, north half of southwest quarter, southeast quarter, and southeast of southwest quarter, all in section 4; southeast quarter, north half of *southeast* quarter, west half of southwest quarter, southeast of southwest of section five; north half of northwest quarter, west half northeast quarter, southwest of northeast, northeast of southeast of section eight; west half of northeast quarter, northwest quarter, northeast of southwest, east half of northeast quarter, northwest of southwest quarter, southeast quarter of section 9; southwest of northeast *west half*, west half of southeast of section 10; west half of northeast quarter, west half and southeast quarter of section 15;
northeast of southwest quarter, north half, east half of southeast,
69 northwest of southeast quarter of section 22; southwest of northwest quarter, southwest of southwest quarter of section 23; east half of southeast, west half of southwest, northwest of southeast quarter of section 25; southeast of northwest quarter, northwest of northwest quarter, east half of southwest quarter, and southeast quarter of section 26; west half of southwest quarter, southeast of southwest quarter of section thirty-one; east half of northeast quarter, northwest of northeast quarter, southeast quarter, northeast of southwest quarter, northeast of northwest quarter, and west half of northwest quarter of section 35; northwest of northwest quarter, half of southwest, northeast of northeast quarter of section 36, all of township one south, of range five east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of northeast quarter, south half of northwest quarter of section 2; east half of north-

west quarter, northwest of southeast quarter, southeast of northwest of section five; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter of section 7; southeast of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, and south half of section eight; southeast of northeast quarter, southeast quarter of section 10; all of section 11; southeast of northwest quarter, northeast of northwest quarter, *southeast of northwest quarter*, west half of northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter of section 12; north half of northeast quarter, southwest of northeast quarter, west half and southeast quarter of section 13; all of section 14; east half southwest quarter, south half of northwest quarter of section 15; all of section 17; north west of northeast quarter of section 18; south half of northeast quarter, east half of northwest quarter, southeast of southwest quarter, southeast quarter of section 19; all of section 20; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section 21; north half, northeast of southwest quarter, west half of southwest quarter, east half of southeast quarter of section 22; all of section 23; all of section 24; all of section 25; east half of northeast quarter, northwest of northeast quarter, east half of southeast quarter, southwest of southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section 26; northeast quarter, southwest of southeast quarter, west half of *north of* northwest quarter of section 27; all of section 28; all of section 29; southwest of southwest quarter, east half of northeast quarter, east half of southeast quarter of section 30; northeast quarter, south half of southwest quarter of section 31; northeast quarter, *of* southeast of southwest quarter, northwest of southwest quarter, northeast of southwest quarter, west half of northwest quarter of section 32; east half northwest quarter, east half of southwest quarter, northwest of southwest quarter, southwest of the southwest quarter of section 33; all of section 34; all of section 35; all of section 36, town two south, of range six east. All of section one; all of section 2; east half northwest quarter, east half southwest quarter, northwest of southwest quarter of section 3; southeast quarter, northeast of southeast quarter, west half of southeast quarter, east half of northwest quarter of section 4; east half southeast quarter, northeast quarter, west half of southeast quarter of section 6; north half southeast quarter, north half southwest quarter, southeast of southwest quarter of section 7; northeast quarter, s outheast of northwest quarter, east half of southeast quarter, northwest of southeast quarter of section 10; southeast quarter, west half of northwest of southeast quarter of section 11; north half, north half of southwest quarter, southeast of southwest quarter, north half of southeast quarter, southwest of southeast quarter of section 12; northeast of northwest quarter, west half of northwest quarter of section 14; northeast quarter, east half of northwest quarter, northwest of southeast quarter, east half of southwest quarter of section 18, of township three south, six east. West half of northeast quarter, west half of southeast quarter, southeast of southeast quarter of section 2; all of section 3; all of section 4; all of section 5; all of section 6; all of section 7; all of section 8; all of section 9; all of section 10; all of section 11; southwest of northwest quarter, south half of section 12; all of section 13; all of section 14; all of section 15; all of section 17; east half, east half of northwest quarter of section 18, of township three south, of range seven east. Southwest of southwest quarter, southeast of southwest quarter of section one; west half of northeast quarter, northwest quarter, south half of section 2;

northeast, northeast of southeast quarter of section 3; northeast of northwest quarter, north half of section 4; north half, west half of southwest quarter, northwest of southeast quarter of section 5; northeast of the northwest quarter, north half of northeast quarter of section 7; northeast of northwest quarter half of northwest quarter of section 8; east half of section 11; all of section 12; northeast quarter, south *south* half of southwest quarter, east half of southeast quarter, southwest of southeast quarter, northwest of southwest quarter, *southwest of southeast quarter*, of section 13; northwest of northwest quarter of section 23; northwest quarter, northeast of southwest quarter of section 24, of township one south, of range eight. East half northwest quarter, southwest of northwest quarter, west half of southwest quarter of section 6; southeast of northwest quarter, west half of northwest quarter, northeast of southwest quarter, west half of southwest quarter, west half of southeast quarter of section 7; southeast of southwest quarter, southwest of southwest quarter of section 8; northeast of northwest quarter, half of northwest quarter, west half of southwest quarter of section 17, of township three south, of range eight. Southwest quarter, west half of southeast quarter, southeast of southeast quarter of section one; south half of section 2; southeast quarter, southeast of southwest quarter of section 3; west half south quarter section 6; the southeast of northeast quarter, west half of northeast quarter, west half of southeast quarter of section 7; west half of northwest quarter of section 8; east half southwest quarter, northeast northwest quarter of section 10; all of section 11; north half, west half of southwest quarter, northwest of southeast quarter of section 12; southwest of southwest quarter, east half of southwest quarter, southwest of southeast quarter of section 13; all of section 14; east half of southeast quarter, southwest of southeast quarter of section 15; west half of northwest quarter, south half of section 17; all of section 18; north half southeast quarter of section 19; all of section 20; west half of northeast quarter, southeast of northeast quarter, west half of southeast quarter of section 21; east half, south half of northwest quarter, northwest quarter of section 22; northeast quarter, west half, east half southeast quarter, southwest of southeast qr. of section 23; west half of northeast quarter, west half, west half of southeast quarter of section 24; northwest quarter, north half of southwest quarter, west half of northeast quarter of section 25; all of section 26; all of section 27; all of section 28; west half of northeast quarter, southeast of northeast quarter, west half of southeast quarter of section 29; north half of northeast quarter of section 30; all of section 32; north half, west half of southwest quarter, northwest of southeast quarter of section 33; northeast quarter, northeast of northwest quarter, west half of northwest quarter, east half of the southeast quarter of section 34; west half of northwest quarter, northwest of southwest quarter, east half of southwest quarter of section 35; south half *of* southwest of northeast quarter, southeast of northeast quarter of section 36, of town one south, of range nine east. West half of northeast quarter, northeast of northeast quarter, northwest quarter of section one; all of section 2; northwest quarter, east half of northeast quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section 3; east half of northeast quarter, southwest of northeast quarter, west half, west half of southeast quarter, northeast of southeast of section 4; east half of section 5; southwest of southwest quarter of section 8; west half of northwest quarter of section 9; east half of northeast quarter, southwest of northeast quarter, northwest quarter, east half of southwest quarter, south-

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east quarter of section 10; northeast quarter, west half of section 11; west half of northwest quarter, northeast of northwest quarter, *northeast of northwest quarter*, west half of southwest quarter, southeast of northwest quarter of section 12; northeast of northwest quarter, northwest of northwest quarter of section 13; northeast of northeast quarter, northwest of northeast quarter, north half of northwest quarter of section 14; northeast quarter, west half of section 15; west half of northeast quarter, northeast of north west quarter, southeast of southeast quarter of section 17; east half northeast quarter, east half southeast quarter of section 20; northeast quarter, west half of section 21; northeast of northwest quarter, west half of northwest quarter of section 22; southeast of southwest quarter of section 26; west half of southwest quarter, southeast of southwest quarter of section 27; south half of northeast quarter, west half of southeast quarter of section 28; east half of southwest quarter, *east half of the southwest quarter* of section 29; southeast of *south* southwest quarter, half of southwest quarter, southwest of northwest quarter, south half of southeast quarter of section 30; west half of northwest quarter, southeast of northeast quarter of section 31; east half *of* southwest quarter of northwest quarter, north half of southwest quarter, southeast of southwest quarter of section 32; all of section 33; all of section 34; west half of southwest quarter, southeast of southwest quarter, northeast of northwest quarter of section 35; southwest of northeast quarter, east half of southeast quarter of section 36, township two south, of range nine east. Half northeast quarter, southwest of northeast quarter, south half of southwest quarter, southeast quarter of section one; west half of northeast quarter, southeast quarter, west half of section 2; west half of northeast quarter, south half of southeast quarter of section 3; east half, east half northwest quarter, southeast of southwest quarter of section 4; northeast of northeast quarter of section 5; east half of southwest quarter southwest of the southeast quarter of section 7; northeast of southwest quarter, southwest of southwest quarter of section 8; east half of south west one quarter, east half, east half of northwest *corner* of section 9; all of section 10; northwest quarter, east half, west half of southwest quarter of section eleven; all or section 12; all of section 13; south half of northeast quarter, west half of northwest quarter, southeast of northwest, south half of section 14; all of section fifteen; northwest of northwest quarter
72 of section 17; north half of northeast quarter of section eighteen, of township 3 south, of range nine east. South half of northwest quarter, west half of southwest quarter, northwest of northwest quarter, east half of southwest quarter of section one; northwest of northeast quarter, south half of north*west* quarter, south half of northwest quarter of section two; east half of southwest quarter, northwest of southeast quarter, southeast of northwest quarter of section 5; northeast of southeast quarter of section six; south half of northeast quarter, south half of northwest quarter, northwest of southwest quarter, southeast quarter of section 7; southeast quarter of northeast quarter, southwest of northwest quarter, southeast of northwest quarter, southwest quarter, southeast quarter of section eight; southeast of northeast quarter, southeast quarter of section 10; all of section 11; northeast of northwest quarter, southeast of northwest quarter, southeast of northeast quarter, west half of northwest quarter, southwest quarter, east half of southeast quarter, west half of southeast quarter of section 12; north half of northeast quarter, southwest of northeast quarter, southeast quarter, west half of section 13; all of section 14; east half southwest quarter, south half northwest quarter of section 15; all of section 17; north.

west of northeast quarter of section 18; south half northeast quarter, east half northwest quarter, southeast of southwest quarter, southeast quarter of section 19; all of section 20; east half, west half of northwest quarter, northeast of northwest quarter, southeast of southwest quarter of section 21; north half, *of* northeast quarter of southwest quarter, west half southwest quarter, east half of southeast quarter of section 22; all of section 23; all of section 24; all of section 25; east half northeast quarter, northwest northeast quarter, east half southeast quarter, southwest southeast quarter, east half of northwest quarter, southwest of northwest quarter, southwest quarter of section 26; northeast quarter, east half southeast quarter, southwest of southeast quarter, west half of northwest quarter, *southeast quarter* of section 27; all of section 28; all of section 29; southwest of southwest quarter, east half of northeast quarter, east half of southeast quarter of section 30; northeast quarter, south half of northwest quarter of section 31; northeast quarter, southeast of northwest quarter, northwest of southwest quarter, northeast of northwest quarter, west half of northwest quarter of section 32; east half, east half southwest quarter, northwest quarter, northwest of southwest quarter, southwest of southwest quarter of section 33; all of section 34; all of section 35; all of section 36, of township two south, of range six east. West half of northeast quarter, west half, west half of southeast quarter, southeast of southeast quarter of section two; all of section one; all of section 3; east half of southeast quarter, southwest of southeast quarter, east half of southwest quarter, east half of northeast quarter of section 4; east half of northeast quarter, northeast of northwest quarter, southwest of southeast quarter, northwest of southeast quarter, of section 7; all of section 10; all of section 11; all of section 12; all of section 13; all of section 14; east half of northeast quarter, northwest of northwest quarter, north half of northwest quarter of section 15; south half of northeast quarter of section 22; east half, east half of northwest quarter, northwest of northwest quarter, northeast of southeast quarter, southeast of southwest quarter of section 23; all of section 24; all of section 25; southeast quarter, southeast of northwest quarter, southwest of southwest quarter, southeast of southwest quarter, northeast of southwest quarter of section 26; northeast of northeast
73 quarter, southeast of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section 34; all of section 35; all of section 36, township one north, range nine east. South half, east half northwest quarter, northwest of northwest quarter, east half of southwest quarter of section 19; west half of northwest quarter, south half of section 20; south half of southwest quarter of section 21; east half of northeast quarter, east half of southeast quarter, southwest of southeast quarter of section 23; northeast quarter, west half of section 24; west half, west half of southeast quarter, southeast of south quarter, northeast of southeast quarter of section 25; east half of northeast quarter, northwest of northeast quarter of section 26; southeast of northeast quarter, southeast quarter, west half of section 28; west half of northeast quarter, northwest qr., northeast quarter of southeast quarter, south half of southeast quarter, *south half of southeast quarter*, northwest of southwest quarter, of section 29; east half of northeast quarter, northwest of northeast quarter, northeast of southeast quarter, east half of northwest quarter, north half of southwest quarter, southwest of southeast quarter of section 30; northwest of northwest quarter of section 31; east half, northeast quarter, northwest of northeast quarter of section 32; northwest quarter, east half, northeast of southwest quarter of section 33;

north half, northeast of southeast quarter, west half of southeast quarter, southwest quarter of section 34; west half of southwest quarter, southeast of southwest quarter of section 35; all of section thirty-six, township two, range nine east. Southwest of northwest quarter of section one; southeast of southeast of section 2; southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section 11; southeast of northwest quarter, west half of northeast quarter of section 14; southeast of southeast quarter, west half of southwest quarter, southeast of southwest quarter of section 26; northwest of northwest quarter, northwest of northeast quarter of section 35, township one north, of range five east. Southwest of northwest quarter, south half of southwest quarter of section 36, township two north of range five east. East half lot one, northeast quarter, section six; southeast of southeast quarter of section 13; southeast of northwest quarter, south half of northeast quarter of section 24; west half of northeast quarter of section 25; east half of northwest quarter of section 35, township one north, of range six east. Southeast of southeast quarter of section 19, township two north, of range six east. East half of southeast quarter, southwest of southeast quarter of section one; northwest of northeast quarter, east half of northeast quarter of section 12; northwest quarter of section 19; southeast of northwest quarter, southwest of northeast quarter, west half of southeast quarter of section 21; southwest of southwest quarter of section 27; east half and southwest of northeast quarter of section 28; southwest of northeast quarter of section 35; southeast of northeast quarter of section 36, township one north, of range seven east. Southeast of southwest quarter of section 21; north half of southeast quarter, west half of southeast quarter of section 22; southeast of southeast quarter, southeast of southwest quarter, northwest of southwest quarter of section 23; southwest of northwest quarter, west half of southwest quarter, southeast of southwest quarter of section 24; southwest of northwest quarter, southwest of southeast quarter, northwest of southwest quarter of section 25; northeast of northeast quarter, northeast of southeast quarter of section 26; west half of northeast quarter, southeast of northeast quarter, northeast of southeast quarter of section 36, township two north, range
74 seven east. Southeast of southeast quarter of section 5; lot one northwest (containing sixty-six acres) section six; northeast of southwest quarter of section 6; lot two northwest quarter, (containing fifty-two acres,) southwest of northeast quarter, section 7; southeast of southwest quarter, southwest of southwest quarter of section 8; southwest quarter of section 22; southeast of southeast quarter; southwest of southwest quarter of section 26; northwest of northwest quarter of section 27; northeast of northwest quarter, east half of northeast quarter of section 28; all of section 34; west half of northwest quarter, southeast of northwest quarter, southwest of northeast quarter, east half of northeast quarter, west half of southeast quarter of section 35; northwest of northwest quarter of section 36, township one north, of range eight east. Northwest of northeast quarter, northwest quarter, east half of southeast quarter of section 31, town two north, of range eight east. Southwest of northwest quarter, east half of southwest quarter, northwest of southwest quarter; northeast quarter, northwest of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section 10; north half, west half of southwest quarter, southwest of southeast quarter, east half of southeast quarter of section eleven; east half, east half of northwest quarter, southwest of northwest quarter; southwest quarter of section 12; northwest of northeast

quarter, north half northwest quarter of section 13; northeast quarter, east half of northwest quarter, northwest of northwest quarter of section 14; northwest of northeast quarter, northwest quarter, northeast of southwest quarter, southwest of southeast quarter, west half southwest quarter, southeast of southwest quarter of section 25; southwest of northwest quarter, south half of section 28; east half of southeast quarter of section 29, township two south, of range five east. The whole containing one hundred and three thousand eight hundred and eighteen acres, less thirty-eight hundred acres pre'mpted.

In trust for the uses and purposes directed in said act of incorporation, in the words following, that is to say:

First. To secure and guarantee the constructing, completing, and furnishing said road and branch *is*, in the manner and time, and upon the condition in the act of incorporation of said company provided, for the faithful application all money or property arising from the sale of lands, or obtained upon the faith of the same, as hereinafter authorized, to the constructing, completing, equipping, and furnishing said road and branches, in accordance with the terms of said act of incorporation.

Second. A portion of said lands so conveyed to said trustee, not exceeding one fourth part thereof in value, to be designated by said company, shall be held by said trustee, free from encumbrances, for purposes of sale, from time to time, on the requisition of said company, for the purpose of raising funds for the payment of interest on loans, in case of deficiency from other sources, and for such other expenditures as the exigencies of the business of the company may require, provided that no portion of said fourth part of said lands shall be sold until said road and branches shall have been actually finished.

Third. For the purpose of raising funds, from time to time, for the construction and completion of said road and branches, and the purchase of iron and other materials to be used therein, said company may issue its bonds, countersigned by the said trustee, in sums of not less than five hundred, or more than one thousand dollars each, at
75 rates of interest not higher than seven per centum per an'um, payable semi-annually, the principal of said bonds payable in the year one thousand eight hundred and seventy-four, at such place as it shall designate. The payment of said bonds shall be secured by a mortgage of the lands, as hereinbefore provided for, which said mortgage shall be a prior lien, and shall be referred to and recited in said bonds so to be issued by said company, it being understood and agreed that the said county court shall and will make, execute, and deliver to the said trustees such proper deed, conveyance, declaration of trust, or other assurance, as shall from time to time be necessary and proper, and as their counc*il* learned in the law shall reasonably advise, for the better carrying into effect the true object of this indenture, and of securing by mortgage the payment of each and of all said construction bonds in manner and form in such additional instrument, to be fully and at large set forth and declared, with the same effect and certainly as if the provisions thereof had been embodied and set forth in this indenture:

To have and to hold all and singular the above-granted and described premises, with the appurtenances, to the said Isaac Seymour, trustee as aforesaid, and to his successors, until all the uses and trusts, hereinbefore set forth and declared, shall be fully and completely accomplished, and the said trustee shall only be accountable for the exercise of reasonable diligence in the management of said trust.

In testimony whereof the said party of the first part have caused

their seal to be *here* hereto affixed, and the president and secretary have subscribed their names the day and year first above written.

S. J. R. WILSON, *Co. Judge.*
THOMAS M. SCOTT.

STATE OF ILLINOIS, *Wayne County:*

I, J. W. Barnhill, county clerk in and for the county of Wayne, and State of Illinois, do hereby certify S. J. R. Wilson, county judge, & Thomas M. Scott, associate judge, personally appeared before , and acknowledged that they signed the foregoing deed of trust for the purposes therein named.

Given under my hand and seal of office this 20th day of April, A. D. 1859.

[SEAL.] J. W. BARNHILL, *Clerk.*

Filed 3d May, 1859.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, *Wayne County:*

I, R. B. Slocumb, circuit clerk in and for the county of Wayne, and State of Illinois, do hereby certify that the above is a true and correct copy of the foregoing deed, as appears from the record in my office.

Given under my hand and official seal, at Fairfield, this 19 day of January, 1864.

R. B. SLOCUMB, *Clerk,*
[L. S.] By J. A. LINVILLE, *Deputy.*

(Indorsed:) Filed March 7, 1865. P. P. Enos, clk.

Order for clerk to give notice of election.

September special term, A. D. 1855.

Ordered that the clerk of this court be required to advertise for
76 a poll to be opened at the ensuing November election, that the people may vote for or against the county court of said county giving as a bonus twenty-five hundred acres of our swamp lands per mile to any responsible company that will build a railroad through said county, commencing at a suitable point on the Central Railroad, and running east by the way of Mt. Vernon and Fairfield to the east line of Wayne County, or to Mount Carmel, on the Great Wabash River.

Ordered that the Independent Press, and all other papers favorable to a railroad on said contemplated line, and extending thence to Saint Louis, be requested to publish the foregoing order.

October special term, A. D. 1855.

Whereas at a meeting of the citizens of Wayne County, held at the court-house in Fairfield, on Saturday the 6th inst., for the purpose of taking into consideration the subject of our swamp lands as a bonus for the building of a railroad through our county, the meeting was organized by calling E. A. Spooner to the chair, and appointing Thomas Lowery secretary, when the following was adopted by the meeting without a dissenting voice, to wit:

Whereas the recent action of the county court, if approved by the people, would limit the said county to giving only the amount of swamp lands prescribed, which might retard our getting a railroad in a speedy way: Therefore,

Resolved, That the said county court be requested to order a vote

"For a railroad" and "Against a railroad," and if the majority of the votes in the county be cast for a road, the said county court shall give our swamp lands, or such part thereof as shall be necessary to secure the building of a railroad through Wayne County.

It is therefore ordered that the clerk of this court be required to advertise for a poll, to be opened at the different precincts of Wayne County, at the ensuing November election, that the electors may vote for a railroad and against a railroad, in pursuance of the foregoing resolution.

April special term, 1859.

And now, on this day, the court executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne County. The conditions and provisions of said trust deed will more fully appear by referring to said trust deed, which is entered of record in the recorder's office of said county, in mortgage book B, page' 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour, as collateral security, to enable the Mount Vernon Railroad Company to procure money to build a railroad through Wayne County, from the eastern boundary of said Wayne County to Mount Vernon, in Jefferson County; and which mortgage is refer'ed to and recorded in the recorder's office of said Wayne County, in mortgage book B, pages 341 to 359.

And it is ordered by the court that Samuel J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymour, trustee as aforesaid, in the said county of Wayne.

Ordered that the court adjourn till court in course.

S. J. R. WILSON, *Co. Judge.*
THOMAS M. SCOTT,

77 In the county court of Wayne County, Illinois.

STATE OF ILLINOIS, *Wayne County, ss:*

I, Oliver Holmes, clerk of the county court in and for said county of Wayne, and State of Illinois, do hereby certify that I have compared the foregoing copy of orders and proceeding had by the county court of said county, at the several meetings of said court as aforesaid, with the records thereof remaining in my office, and have found the same to be a correct transcript therefrom.

In testimony whereof I have herewith set my hand and official seal, at my office in Fairfield, this 8th day of December, A. D. 1869.

[L. S.] OLIVER HOLMES,
County Clerk.

[Int. rev., O. H., Dec. 8, 1869, 5 cents.]

April special term, 1859.

At a special term of the county court of Wayne County, began and held at the court-house in Fairfield, on the 20th day of April, 1859—

Present, Hon. S. J. R. Wilson, judge; Tho. M. Scott, associate; J. W. Barnhill, clerk.

Order of county court of Wayne County.

And now, on this day, the court executed to Isaac Seymore, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne County. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed,

which is entered of record in the recorder's office of said county in mortgage book B, pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymore, as collateral security, to enable the Mt. Vernon Railroad Company to procure money to build a railroad through Wayne, from *from* the eastern boundary of said Wayne County to Mount Vernon, in Jefferson County, and which mortgage is referred to and is recorded in the recorder's office of said Wayne County, in mortgage book B, pages 341 to 359.

And it is ordered by the court that Sam'l J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymore, trustee as aforesaid, in the said county of Wayne, State of Illinois.

WAYNE COUNTY, *ss:*

I, Oliver Holmes, clerk of the county court in and for the county aforesaid, do hereby certify that the foregoing is a true and correct copy of the record of said court at said special term, as appears from the records of court in my office, at Fairfield, this 2nd day of September, A. D. 1869.

[L. S.] OLIVER HOLMES, *Clerk.*

[5-ct. int. rev. stamp, canceled Sept., 1869.]

Deposition of Angus M. Grant.

ANGUS M. GRANT, being introduced and duly sworn, deposeth as follows, to wit:

78 My age is 55 years. I have lived in this place 32 years. I was secretary of the Mount Vernon Railroad Company from the 30th day of May, A. D. 1859, and have been ever since. Some of the books and files of the company came into my hands as such secretary. The only book of the company now in my possession is that of the proceedings of the commissioners and board of directors, so far as they were entered in this book, a copy which is hereto attached as Exhibet A, and made a part of my deposition. There were never in my possession any minutes or loose files of the Mount Vernon Railroad Company, or of the Belleville and Fairfield Railroad Company, of any meeting or meetings held during the years 1855 and 1856, or at any meetings prior to 1858. I had at one time another book in my possession, in which, I think, were recorded all the proceedings, from the first organization of the company up to about the year 1857, and a part of which, I think, is embodied in the paper hereto attached, marked "A," but which book was taken from my possession for the purpose of beginning some suits against the said railroad company in the circuit court of Jefferson County, since which time I have made some enquiry for it, but have been unable to find it. There were two other books, kept in New York, in one of which was kept an account of the transfers of stock, and in the other was kept the minutes of the proceedings of the directors in that city, which two books were kept by the said company after the organization by the contractors in the 1858. I was in New York in the winter of 1859 and 1860, I think, at which time I saw the said two books, but have not seen them since. They were at that time in the possession of N. A. Smith and Ira Hersey. Smith was treasurer, and Hersey was transfer agent of the company at that time, and both were directors. At the time I was in New York, above referred to, I, as sec-

retary, signed a contract made by the company with a man by the name of Morris, or Morrison, for money to buy railroad iron. Said Morris, or Morrison, furnished money to b'y the iron, the amount of which was the amount agreed upon in a contract between the company and Crippin, Kendrick, and others for railroad iron. The money was paid over in my presence, and bonds of the railroad company were either paid to Morris, or Morrison, or hypothecated to him for repayment. Judge Wilson, of Wayne County, was present at all of this transaction, and knew all about it. I never heard any objection made by him to the transaction, but he seemed to be very well pleased with it.

Interrogatory. Look upon the paper now shown you, hereto attached, and marked as "Exhibet B," and state all that you recollect in relation to the execution of the deed of trust and mortgage therein referred to.

Ans. I was there at the time said instruments were executed. Gov. Casey and Voorhees were also there, and I think, perhaps, Van Duzen was also there. Judge Wilson and a man by the name of Scott, to whom I was introduced as the associate justice, were also there, and executed the contract on behalf of the county, as I understood it. Zadok Casey, Thomas M. Casey, John M. Johnson, Stierson H. Anderson, John R. Allen, have all been dead some years, except Thomas M. Casey, who died several months ago.

(The introduction of Exhibet B. and the testimony in relation thereto, objected to by C. A. Beecher, esq., atty. for defts.)

ANGUS M. GRANT.

Subscribed and sworn to this 7th day of September, 1869.

J. W. BAUGH,
Notary Public.

79 *Election of directors of Mt. Vernon R. R. Co.*

At a meeting of the stockholders of the Mount Railroad Company, held at Mt. Vernon, Jefferson County, Illinois, under the provisions of the charter of said company, approved February 15th, 1855, and in pursuance of the call and notice of a majority of the commissioners, on this 13th day of November, 1855, Zadok Casey and John R. Allen, two of said commissioners, acting as judges of said election, it appeared that the whole amount subscribed to said stock is the sum of eighteen thousand one hundred dollars, which, being more than one thousand dollars per mile of the line of said railroad, said commissioners, as judges of said election, proceeded to take the votes of subscribers for seven directors of said company; when, the ballots being counted, it appears that the whole number of votes given is one hundred and sixty-five; necessary to a choice, eighty-three; and that Walter B. Scates had one hundred and fifty-five, John R. Allen one hundred and thirty-eight, Downing Baugh had one hundred and thirty-one, Newton R. Casey had one hundred and twenty-five, John N. Johnson had one hundred and fourteen, Timothy Condit had one hundred and eight, and Hezekiah B. Newby had eighty-four votes, each of whom, having a majority of the votes cast, were duly elected directors of said company.

Given under our hands this 13th November, 1855.

Z. CASEY,
JOHN R. ALLEN,
Commrs. s'd Election.

Meeting of board of directors Mt. Vernon R. R. Co.

WEDNESDAY, 14*th Nov.*, 1855.

The board of directors met pursuant to appointment.

Present, W. B. Scates, T. Condit, J. R. Allen, N. R. Casey, and D. Baugh.

On motion, D. Baugh was appointed secretary of this meeting.

On motion, W. B. Scates was elected president of the board of directors.

On motion, D. Baugh was appointed secretary of the board of directors.

On motion, John R. Allen was appointed treasurer of said board.

On motion, the section line dividing sections 29 and 32 at Mount Vernon, running thence west, with such variations as may be necessary to reach Ashley, in Washington County, be adopted as a line for the time being, purpose of procuring the right of way.

Ordered, that Z. Casey and N. Johnson, and each of them are hereby appointed an agent to solicit and procure of the proprietors of land a distance of one hundred feet of right of way to said company for a half mile in width on each side.

On motion adjourned inst. at two o'clock, p. m.

Meeting of board of directors of Mt. Vernon R. R. Co.

MOUNT VERNON, *Dec. 6th*, 1855.

At a meeting of the president and directors of the Mt. Vernon Railroad Company—

Present, W. B. Scates, pres't, Timothy Condit, John R. Allen, Newton R. Casey, D. Baugh.

80 On motion a by-law was adopted for the election of directors to fill vacancies.

W. B. Anderson was elected a director to fill the vacancy occasioned by the death of John N. Johnson.

Adopted a resolution requesting A. M. Grant and W. B. Anderson to survey line from Mt. Vernon to Fairfield.

Adjourned until Saturday the 8th inst.

D. BAUGH, *Sec'y.*

MT. VERNON, *Oct. 18th*, 1858.

The Mt. Vernon Railroad Company met pursuant to call by the president.

Present, Hon. W. B. Scates, pres't, H. B. Newby, W. B. Anderson, J. R. Allen.

On motion, C. P. Pace was appointed secretary pro tem.

On motion to fill vacancy occasioned by the removal of T. Condit, D. Baugh, and N. R. Casey, Messrs. H. T. Pace, Z. Casey, and W. Duff Green were elected.

On motion—

Resolved, That the following by-laws be adopted:

The mode of transferring stock shall be by written assignment thereof in a book for that purpose, to be kept by the secretary.

At any election for directors of the company, none shall be entitled to vote, except those who appear to be stockholders by the transfer book.

A transfer of stock on the books of the company shall discharge the stockholder making it from all liability for any balance that may be due

and unpaid for said stock, and the party to whom the same is transferred shall become liable for all balances due therefrom to the company.

Ordered that the secretary procure two suitable books, one for recording the minutes of the stockholders' meetings and the *h*oard of directors the other for the transfer of stock.

Transfer of stock shall only be authority in writing, when done by an attorney.

The board of directors shall hold their office for one year, and until their successors are elected.

On motion, adjourned to meet to-morrow evening at 4 o'clock.

C. T. PACE,
Secretary pro tem.

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON, ILLINOIS, *October 19th*, 1858.

Pursuant to a call of the stockholders of the Mount Vernon Railroad Company, and an adjourned meeting of the directors of said company, the stockholders met at Mount Vernon, Jefferson County, Illinois, on the 19th day of October, A. D. 1858, for the purpose of electing a president, secretary, treasurer, and directors for said company, for the ensuing year.

Present, Barnard L. Vorhies, Norman A. Smith, Isaac T. Van Duzen, Isaac D. Gentchius, and W. D. Green, representing twenty thousand dollars in the stock of said company.

On motion, Barnard L. Vorhies was elected president pro tem. and I. D. Gentchius secretary.

The stockholders then proceeded, by ballot, to elect the officers of said company for the ensuing year, when Barnard L. Vorhies was elected
81 president, Isaac D. Gentchius secretary, Norman A. Smith treasurer, and Barnard L. Vorhies, Norman A. Smith, Isaac T. Van Duzen, I. D. Gentchius, Zadock Casey, Angus M. Grant, and George G. Rockwood were elected directors for the ensuing year.

On motion, adjourned to meet on the 4th day of December, A. D. 1858.

I. D. GOETCHIUS,
Sec. pro tem.

MT. VERNON, ILLINOIS, *4th Dec.*, 1858.

At a meeting of the railroad co., directors of, held at Mt. Vernon the 4th day of December, 1858, *at Mt. Vernon*—

Present, I. T. Van Duzen, N. A. Smith, B. L. Vorhies, I. D. Goetchius; the chair was occupied by the president.

Resolved, That the by-laws be presented at the next meeting of the board by N. A. Smith.

Meeting adjourned to meet on 11th inst.

I. D. GOETCHIUS,
Secr.

Meeting of the board of directors of Mt Vernon R. R. Co.

MT. VERNON, ILLINOIS, *Dec. 12th*, '58.

Pursuant to adjournment, the board met.

Present, B. L. Vorhies, I. T. Van Duzen, Gov. Casey, N. A. Smith.

In absence of sec'y, N. N. Smith chosen sec. pro. tem.

By-laws offered by N. A. Smith.

Amendment offered by Gov. Casey and adopted with amendment.

Moti'ng made and carried, that Mr. I. T. Van Duzen is general super *tenurd* of the work.

Adjourned to meet at the company's office, Thursday eve., 7 o'clock.

I. D. GOETCHIUS.

By-laws of board of directors Mt. Vernon R. R. Co.

MT. VERNON, *Dec. 12th*, 1858.

BY-LAWS.

ANNUAL MEETING.

The annual meeting of the stockholders for election of directors shall be held on the first Monday in November, in each and every year, at the comp.'s office in Mt. Vernon.

OFFICERS OF THE BOARD.

The officers of this comp. shall consist of pres'd', sec't', treas.

The pres'd' shall be elected by the board of directors, and shall hold his office for one year. He shall be presiding officer of the board; shall have a general supervision of the affairs of the comp., and see that the orders and resolutions of the board are carried into effect.

The duties of the sec. shall be to give public notice of the annual
82 meeting of the stockholders, notice of all special meetin' of the board. He shall keep a true and fair record of their proceedings in a book prepared for that purpose, and safely keep all documents and papers which shall come into his possession as sec't'.

It shall be the duty of the treas. to safely keep an account for all monies, funds, and property of the comp. which shall come to his hands, and present such statement and render such acts to the directors as may from time to time be required of him; he shall pay out any monies in his hands belonging to comp. only upon the order of the pres. or by vote of the board.

In absence of the pres. all bills shall be audited by the sup. of the work.

Ordered, The pres. shall hold his office for the term of one year, or until his successor is elected by the board.

I. D. GOETCHIUS.

Meeting of board of directors Mt. Vernon R. R. Co.

MT. VERNON, ILLINOIS, *Dec. 16th*, 1858.

Pursuant to adjournment, the board met at 7 o'clock, Dec. 16, '58.

Present, Messrs. Gov. Casey, B. L. Vorhees, N. A. Smith, I. T. Van Duzen, I. T. Goelctrius.

Gov. Casey called on Mr. N. A. Smith for a report from Richview, which was given.

Motion made by Gov. Casey, and carried by the board, that some definite point be decided upon to commence securing deeds for right of *a* way of railroad from Mt. Vernon to Ashley.

Motion made by Mr. Van Duzen, and carried, that the chief engineer present to the board a profile of location of route as far as located.

Also, a motion made by Dr. N. A. Smith that a preparatory step be

taken to establish a telegraph line along the line of said road, and carried.

Meeting adjourned to meet at the comp. office on Thursday, Dec. 23, (evening,) at 7 o'clock.

At a meeting of the directors, held in Mt. Vernon on the 4th day of Dec., 1858—

Present, I. T. Van Duzen, N. A. Smith, B. L. Voorhies, and I. D. Goetchius.

The chair was occupied by the president.

Resolved, That a committee be appointed to frame by-laws and present the same to the board the next meeting.

A. N. Smith was appointed a com't' of one. Meeting adjourned to meet on 11th inst.

I. D. GOETCHIUS,
Sec.

Meeting of board of directors of Mt. Vernon R. R. Co.

Persuant to adjournment the board met at the company's office, Feb. 28th, '59.

Present, B. L. Vorhies, N. A. Smith, Gov. Casey, A. N. Grant, I. T. Van Duzen, I. D. Goetchius.

Resolved, That the secretary present to Gustavus Wagner, as chief engineer, his discharge, which was unanimously carried by the board.

N. A. Smith reported his progress of negotiations in New York, which was done and accepted by the board.

Moved and carried by the board, that J. L. Germain be employed
83 as chief engineer, at a salary of two hundred dollars per month; one hundred dollars cash, and 100 dollars in land at going rates of the company's land.

Resolved, That a copy of the discharge of Gustavus Wagner, engineer-in-chief, be recorded by the secretary.

Whereas the engineer-in-chief, Maj. G. Wagner, has rendered himself incompetent for the office of chief engineer by intemperance, neglecting his business, wasting time, money, and labour, not properly control'ing the men under his charge, and not rendering to the company calculations and quantities, though repeatedly requested: Therefore,

Resolved, That he is discharged from the office of chief engineer of this road, and from the employ of the company, and that the sec't' serve him with written notice of the same.

I. D. GOETCHIUS, *Sec't.*

Moved and carried that the meeting adjourn to meet at the company's office at 9 o'clock, March 1st, 1859.

I. D. GOETCHIUS, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

Persuant to adjournment, the board met at the comp. office, March 1st, 1859.

Pres' B. L. Voorhies, N. A. Smith, A. N. Grant, Gov. Z. Casey, I. T. Van Duzer, I. D. Goetchius.

Resolved *that*, by the board of the Mt. Vernon Railroad Company, That Barnard L. Voorhees, the president of said company be, and he is hereby, authorized and empowered, with full power and authority to issue the bonds of said company to the amount of eight hundred thousand

dollars, ($800,000,) bearing seven per cent. interest per annum, payable semi-annually at any banking-house in the city of New York; and for the security of said bonds, and the payment of the interest accruing thereon, the said president shall make or cause to be made to a competent trustee or trustees, to be by him appointed, a mortgage of the line of said railroad, together with all its apurtenances, right of way, depot-grounds, and buildings thereon, rolling-stock, machinery, and tools, which are now or may hereafter become the property of said company and belonging to said road.

Resolved, That, further to secure the payment of said bonds and the interest accruing thereon as aforesaid, the pres. of said company be, and he is hereby, authorized and empowered, with full power and authority, to procure and cause to be delivered to the said trustee or trustees a deed of mortgage of and to the lands granted by the county of Wayne, and State of Illinois, to the said railroad company.

Resolved further, That the president of said company be, and he is hereby, authorized to appoint a commissioner to act with said trustee or trustees in conveying or disposing of said lands.

Resolved, That the president shall have the power to deed or convey all real estate and personal property belonging to the company by and with the consent of the directors.

Resolved, That the president shall procure a deed of four thousand acres of land from the county of Jefferson, and sell or negotiate, by mortgage, the same, *by mortgage*, for a sum not exceeding eight thousand dollars, ($8,000.)

I. D. GOETCHIUS, *Sec't.*

84 *Meeting of board of directors of Mt. Vernon R. R. Co.*

Pursuant to adjournment, the board met at the company's office, April 18th, 1850, at 9 o'clock.

Present, B. L. Vorhees, A. N. Grant, Gov. Z. Casey, I. T. Van Duzen, I. D. Goetchius. April 18th, 1859.

Resolved, That the contract of the attorney of the Mt. Vernon Railroad Company, N. A. Smith, esq., with Ira Hersey, esq., of New York City, on the subject of the construction of the Mt. Vernon Railroad, be, and the same is hereby, approved by the board of directors of Mt. Vernon Railroad Company.

I. D. GOETCHIUS, *Sec't.*

APRIL 18, 1859.

At a special meet' of the board of directors held this—present, Gov. Z. Casey, A. N. Grant, B. L. Vorhees, I. T. Van Duzen, I. D. Goetchius.

Moments of last meeting read and approved.

Mr. I. T. Van Duzen presented to the board a letter from Doct. N. A. Smith, treasurer, which was read.

Contents of letter produced.

Letter from N. A. Smith to president & directors of Mt. Vernon R. R. Co

- Letter.

NEW YORK, 7, 1859.

To the president and directors of the Mt. Vernon Railroad Company, Mt. Vernon, Ills:

GENTLEMEN: Since I last had the pleasure of addressing you, I have,

as you are aware, spent most of my time in this city, directing the drawing of the mortgages on the road and land in Wayne County, which I trust you will see duly executed on the part of the railroad company and of Wayne County, and immediately forwarded by express to Ira Hersey, esq., of this city.

Mr. Seymore, the gentleman named as trustee, is the cashier of the Bank of North America, a man well known, and in whom all have the fullest confidence. The mortgages are drawn, you will observe, with great fairness to all parties.

I have ordered the lithographing and printing of the bonds, which will be ready for signatures by the time the mortgages are returned. I have to report that railroad bonds and their securities are looked upon with great suspicion by the leading capitalists of this city, and it has been with great difficulty that I have been able to secure of an able, responsible, and suitable agent for the negotiation of our bonds, and to act in all other matters as the agent of our company in this city.

I have closed this arrangement with Ira Hersey, esqr., under the power of attorney given to me in December last. A copy of our agreement with Mr. Hersey I here*by* enclose, which please enter upon the minutes and approve in due form.

In making this arrangement with Mr. Hersey my judgement dictated me to give him for his services an undivided one-fifth interest in the
85 road instead of the usual commission of 5 per cent. for these reasons:

First. It makes it his interest to quickly and faithfully perform all business of the company, because his pay is dependant on the success of the enterprise; whereas, if his pay was a simple commission, it would end his interest as soon as fees were retained.

Second. To deduct commission from all monies raised by him would absorb a large amount of ready money which should be applied and absorbed in constructing our road and not in commission.

Third. 5 per cent. commission on negotiations of bonds and purchase of iron and materials would draw from the monied revenue of the company full $60,000, which will do the road more good spent on it than paid in commission.

Fourth. Mr. Hersey, being in full connection with the class of persons who create or depress the value of railroad property, will from self-interest (the strongest interest in the world) create a higher value on our whole property.

Fifth. A personal connection with him and his influence will more surely complete our work.

Sixth. It adds to our number a watchful partner, who will mater'l*ey* assist in preserving the rights to all interested.

Seventhly. It will make our employees, the committee of Jefferson and Wayne Counties, feel more sure of their road.

Now, gents, in conclusion, I will say, Mr. Hersey has given, and I have seen, reference of undoubted characters, responsibility, fitt*n*ess for the position he has assumed, which to me are, and will be to all interested, perfectly satisfactory. If you wish for further information, he has permitted me to say to you that Cortland Palmer, esq., of this city, a very wealthy, highly respectable gentleman of this city, you are at liberty to use as his reference.

Permit me to say that we will be enabled to prosecute our work with diligence just as soon as our bonds are issued for our basis.

Resp't., your ob't serv't,

N. A. SMITH.

Meeting of board of directors of Mount Vernon R. R. Co.

Pursuant to adjournment, the board met at the company's office, April 19th, 1859.

Present, Gov. Z. Casey, A. N. Grant, I. T. Van Dusen, B. L. Voorhees, I. D. Goetchiu.

On motion Resolved, That there be a vice-president of the Mt. Vernon Railroad Company *be* appointed to assist the president in the discharge of his duties, and to perform such duties as may be required of him by the board.

Mr. B. L. Vorhees tendered his resignation as president of this board, which was accepted; when, upon motion,

Z. Casey was appointed president of this board, to fill said vacancy.

On motion, Mr. B. L. Voorhees was appointed vice-president of the company.

Mr. B. L. Vorhees offered the following preamble and resolution, to wit:

Whereas it has become expedient and necessary, for the purpose of prosecuting the further construction of the Mt. Vernon Railroad, to negotiate stock and bonds of the company: Therefore,

Resolved, That the capital stock of the company shall be $1,000,000.

86 Resolved, That the president and secretary be, and they are hereby, authorized to transfer 200,000 dollars of the stock of the company to Ira Hersey, esq., of New York City, in fulfilment of contract made by company through N. A. Smith, atty. of said company, at any time said Hersey may call for the same.

Resolved, On motion of Mr. B. L. Vorhees, that the president and treasurer of the Mt. Vernon Railroad Co. be, and they are hereby, authorized and empowered to sign all bonds that may be issued by said company.

On motion the board adjourned.

I. D. GOETCHIUS, *Sec'y.*

Pursuant to adjournment, the local board met by request of the president, May 10th, 1859.

Present, Hon. Z. Casey, B. L. Vorhees, N. A. Grant, I. T. Van Duzen, I. D. Goetchius.

Motion by the president, and carried, that L. D. Germain write out a code of rules and regulations for the construction of the Mt. Vernon Railroad, and submit them to the board for inspection and their consideration.

Motion made by N. A. Grant that the company (Van Duzen, Smith & Co.) go in arbitration with Gustavus Wagner. Carried.

On motion by N. A. Grant, that the president, Hon. Z. Casey, invite the grand jury and court to take a trip on the Mt. Railroad to view the progress and quality of the construction of the road.

On motion, the boardadjourned.

I. D. GOETCHIEU, *Secty.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MAY 10, '59.

Pursuant to adjournment, the board met by request of the president.

Present, Hon. Z. Casey, A. N. Grant, B. L. Vorhees, I. D. Goetchius, and I. T. Van Dusen.

Mr. Vorhees offered the following resolutions:

Rsolved by the president and board of directors of the Mt. Vernon Rail-

road Company, That the chief engineer of this company have consigned to him, under direction of the board, the control of the works of this company, and that he be held responsible to this board, or to its authorized committee or superintendent, whose written instructions shall always govern his proceedings when it shall be deemed expedient for the board, its committee, or superintendent, to give him special directions. Further, that the chief engineer be required to lay before this board, its authorized committee, or superintendent, all necessary plans for the construction of the work of this company, with appraiser's rate, estimates of the same; that plots and profiles of all lines or routes examined by him or by his orders be submitted to this board, with such comparative estimates upon the cost of the same as shall be practicable for him to furnish; that the responsibility of all recommendations, plans proposed, accuracy of details submitted, be, and are hereby, placed upon him, that due responsibility may be had in the constructing office of this company.

Resolved further, That all orders and directions to former agents, master mechanics, and others employed in the construction of this work shall come from him and be given by him in person, or be transmitted through his approved assistants, each of whom this board do most strenuously urge and require at their hands the utmost economy
87 in the execution of the work and operations connected with the construction of our works. That the personal attention of the chief engineers be required to be given to the details of each and every department under his charge. That he be required to build firmly, durably, and as economically as the nature of our designs will warrant or require. Further, that the report to this board without delay the name, station, duty, compensation, when placed, of each engineer, agent, and foreman in *the* employ, acting within or on account of construction, and that it shall be his duty to certify to this board, its committee or superintendent, all bills for engineering, agents, foreman, work done under contract by them, or under their authorized directions, on account of construction. That no account, bill, or estimate for the benefit or on account of any such employed on construction be audited or paid by this company until after the same shall have been examined and certified to by the chief engineer. That it shall be the duty of the chief engineer further to draw up, under the advice of the proper legal officer of this board, all contracts and specifications for the construction of the work under his charge, and submit the same to this board, or its appropriate committee or superintendent, and that no contract for such purpose shall be valid or authorized by this board which does not bear the signature of the president or vice-president and that of the chief engineer, unless by special resolution of this board.

Resolved further, That the chief engineer shall be *resigned* to take duplicate copies of all vouchers, contracts, bills, estimates, plots, maps, and plans, and letters of instructions, one of which he shall keep on file in his office, the other he shall furnish to the office of the president, or as he shall be directed by this board. And, further, that he furnish to the proper auditing office of this company a monthly estimate of all work done on the line of work authorized by the board, and that this be done on or before the tenth day of the succeeding month; and, further, prepare a succinct statement of the general operations of his department, and present the same for consideration at each regular meeting of this board, of which he shall be required to attend as an official member.

I. D. GOETSCHEIUS, *Sec'y.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON, *May 30th*, 1859.

At the request of the vice-president, the board of directors of the Mt. Vernon Railroad Company met at their office in Mt. Vernon.

Present, Z. Casey, B. L. Voorhees, I. T. Vandozen, I. D. Goetchius, and A. M. Grant.

On motion of B. L. Voorhees, it was ordered that the president be instructed take one hundred of the bonds, and deliver them to Dr. N. A. Smith or Ira Hersey, in New York, and that said Smith and Hersey are hereby instructed to sell or hipothecate them for cash for the best price that they can get.

On motion of B. L. Voorhees, it was ordered that the sec't. sign bonds and place in the hands of the creditors of Vandozer, Smith and Co. to double the amount of their indebtedness; and it was further ordered that the remainder of six hundred bonds be placed in the hands of A. M. Grant.

Isaac D. Goetchus tendered his resignation as a member of the board of directors, which, on motion, was accepted.

On motion, the board adjourned.

A. M. GRANT, *Sec't.*

88 *Meeting of board of directors of Mt. Vernon R. R. Co.*

MONDAY, *November 7th*, 1859.

The board met—present, Z. Casey, pres't; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, the board adjourned, to meet on Wednesday, the 9th, at 7 o'clock p. m.

A. M. GRANT, *Sec't.*

WEDNESDAY, *Nov.* 9—7 *o'clock p. m.*

The board met—present, Z. Casey, pres.; B. L. Voorhees, I. T. Vandozer, and A. M. Grant; and, on motion, adjourned to Thursday, 10th, 7 o'clock p. m.

A. M. GRANT, *Sec't.*

THURSDAY, 10*th November*, 1859—7 *o'clock p. m.*

The board met—present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, adjourned to Friday, the 11th Nov., 1859, at 7 o'clock.

A. M. GRANT, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

FRIDAY, *Nov.* 11, 1859—7 *o'clock.*

The board met—present, Z. Casey, pres't; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, adjourned, to meet on Monday, the 14th Nov., at 8 o'clock a. m.

A. M. GRANT, *Sec't.*

MONDAY, *the* 14*th Nov.*, 1859.

At 8 o'clock board met, persuant to adjournment—present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant; and, on motion, the board adjourned to Tuesday, the 15th.

A. M. GRANT, *Sec't.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON, *Nov. 15th*, 1859.

The board met persuant to adjournment. Present, Z. Casey, president; B. L. Voorhees, I. T. Vandoser, and A. M. Grant, and N. A. Smith.

Dr. N. A. Smith presented the following report from Ira Hersey:

OFFICE MT. VERNON RAILROAD COMPANY,
New York, Nov. 8, 1859.

This certifies that the following name' persons held certificate of stock for shares set against their respective names, as per receipts in margin of certificate book, and which are registered in stock ledger of this company, as follows:

Vandoser, Smith & Co., Mt. Vernon, Ill's	2,000	shares.
S. B. Kendrick, Logansport, Ind	1,000	"
L. D. Crippen, Coldwater, Mich	1,000	"
I. T. Vandoser, Mt. Vernon, Ill's	2,000	"
N. A. Smith, Troy, N. Y	2,000	"
Ira Hersey, New York	2,000	"
Shares	10,000	

IRA HERESEY,
Transfer Office, 16 *Wall st., N. Y.*

89 STATE OF NEW YORK,
City and County of New York, ss:

Ira Hersey, being duly sworn, says that the foregoing statement, by him made and subscribed, is just and true, as appears by the books of the Mt. Vernon Railroad Company, in deponent's possession.

IRA HERSEY.

Subscribed and sworn to before me the 8th day of November, A. D. 1859.

In witness whereof I have hereunto set my hand and official notarial seal at the city of New York.

SYLVESTER LAY,
Notary Public, 16 *Wall st., N. Y.*

On motion, it was agreed that Mr. B. L. Voorhees should vote the 2,000 shares reported in the name Vandoser, Smith & Co.

The stockholders then proceeded to the election of directors by ballot, which resulted in the election of the following-named persons: Z. Casey, A. Myers, N. A. Smith, L. D. Crippen, S. B. Kendrick, A. M. Grant, I. T. Vandoser, Ira Hersey, and S. J. R. Wilson.

And, on motion, the members of the board proceeded to the election of officers, which resulted as follows:

For president of the board, Z. Casey.
" secretary " " A. M. Grant.
" treasurer " " N. A. Smith.
" transfer officer " " Ira Hersey.
" superintendent " " I. T. Vandoser.
" attorney " " T. T. Davis.

The following resolution was offered and adopted:

Resolved, That the board of directors appoint or elect an executive

committee of three, of which the president of the board shall be chosen one, who shall have the authority, under the general direction of the board, to perform all the acts which t'e board itself may do, and whose acts shall be binding on the board. The executive committee shall keep minutes of their proceedings, to be entered in the board, and to be kept by the sec't'y of the board, if present; if not present, the minutes shall be signed by the committee, and be entered by the secretary. They shall act in all matters of finance, and the acts of a majority shall be valid. And there shall also be an auditing committee of three, to examine all claims against the company, particularly all expense accounts of the directory, to be approved of by the committee before allowed; and, on motion, Z. Casey, A. Myers, and L. D. Crippin were appointed the executive committee; and S. J. R. Wilson, S. B. Kendrick, and A. M. Grant were appointed as auditing committee.

On motion, the following resolution was adopted:

Resolved, That the Mount Vernon Railroad Company assume the debts of Vandoser, Smith & Co. contracted for the purpose of building and carrying on the work of said road, and the treasurer and auditing committee shall ascertain and settle said indebtedness, and give notes of said company for the same.

On motion the following resolution was adopted:

Resolved, That the board of directors confer with the county court of Wayne County, as to the placing and keeping of the 300 construction bonds of the Mount Vernon Railroad Co., now in the hands of Ira Hersey, and that the same be placed for safe-keeping with such person or persons as may be agreed upon by the county court of Wayne County and the board of directors of the Mt. Vernon Railroad Company.

On motion, the board adjourned to 7 o'clock p. m.

A. M. GRANT, *Sec'ty.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MOUNT VERNON RAILROAD OFFICE,
November 15th, 1859—7 *o'clock p. m.*

The board met, pursuant to adjournment. Present, Z. Casey, S. J. R. Wilson, I. T. Vandoser, L. D. Crippin, S. B. Kendrick, N. A. Smith, and A. M. Grant.

Mr. L. J. Germain tendered, through the president, his resignation as chief engineer of the Mount Vernon Railroad, to take effect October 1st, 1859, which was accepted.

There being several applicants for the office of chief engineer, the board proceeded to ballot for some one to fill that office, which resulted in the election of J. Hill, jr.

On motion, the board adjourned.

A. M. GRANT, *Sect.*

Meeting of board of directors of Mt. Vernon R. R. Co.

MT. VERNON RAILROAD OFFICE,
May 11, 1860.

At the request of I. T. Vandoser, the board was called together by the president.

Present, Z. Casey, S. J. R. Wilson, I. T. Vandoser, A. M. Grant, and Ira Hersey, (by proxy,) Mr. Vandoser.

I. T. Vandoser, reported the resignation of N. A. Smith, as treasurer

of the co., and also as a director, which was accepted; and, on motion, Chas. W. Lewis appointed treasurer of the Mount Vernon Railroad Co., to fill the vacancy of N. A. Smith. And, on motion, Mr. W. Jammerson was elected a director to fill the vacancy of Dr. N. A. Smith.

It was ordered by the board that Mr. W. Jammerson should call on Mr. Lewis for bond as treasurer.

On motion, Mr. W. Jammerson was authorized to call on Mr. Hersey and Smith for bonds to get 750 tons railroad iron for the Mount Vernon and Ashley Railroad.

On motion, the meeting adjourned.

A. M. GRANT, *Sect.*

Certificate of Angus M. Grant.

I, Angus M. Grant, secretary of the Mt. Vernon Railroad Company, certify that the within and foregoing is a true and complete copy of the proceedings of the Mt. Vernon Railroad Company, as appears to me of record from the book of record of said company in my possession.

ANGUS M. GRANT,
Sec'y Mt. Vernon Railroad Company.

MT. VERNON, ILLINOIS, *Sept. 7th, A. D.* 1869.

Contract to deposit bonds with Hersey.

Whereas the county court of the county of Wayne, in the State of
91 Illinois, by virtue of the laws of the State of Illinois, and of the proceedings thereunder had and taken, hath executed in due form, acknowledged and duly delivered, its certain deed of trust and indenture of mortgage to Isaac Seymour, esq., of the city of New York, trustee, each bearing date the twentieth day of April, 1859, whereby the said county court did grant and convey to the said Isaac Seymour, such trustee, one hundred thousand acres of land or thereabouts, lying and being in the said county of Wayne, and particularly described in said deed of trust and mortgage;

And whereas the object and purpose of the said deed of trust and mortgage were to aid in the construction and maint*ai*nance of the railroad of the Mount Vernon Railroad Company, and to secure the payment of the construction bonds issued by the said company, the railroad of which said company is designed to be constructed from Ashley, in the county of Washington, in said State, through the county of Jefferson and Wayne, in said State, and to the eastern boundary of said county of Wayne;

And whereas the said Mount Vernon Railroad Company has issued its four hundred construction bonds of five hundred dollars each, and its six hundred construction bonds of one thousand dollars each, for the purpose aforesaid, and it is designed and intended that one half of said bonds shall be appropriated and set apart for the sole and exclusive purpose of aiding in the construction of and maint*ai*nance of so much of the railroad of the said The Mount Vernon Railroad Company as is or shall be located or situated in the county of Wayne:

Now, therefore, this agreement, made this twenty-seventh day of April, one thousand eight hundred and fifty-nine, between the Hon. S. J. R. Wilson and Thomas M. Scott, judges of the county court of the county of Wayne, State of Illinois, parties of the first part, the Mount Vernon Railroad Company, party of the second part, and Ira Hersey, party of the third part, witnesseth: That the parties of the second part, for and in consideration of the premises and of one dollar to them in hand paid by the said parties of the first and second parts hereto, the receipt

whereof is acknowledged, have issued and delivered to the party of the third part, in trust, two hundred of the said construction bonds or obligations of five hundred dollars each, and three hundred of the said bonds or obligations of one thousand dollars each, to be held by him, subject to the terms, stipulations, and conditions of the said deed of trust, and of said mortgage, for the sole and exclusive purpose of appropriating and expending the same or the avails thereof to the construction and maintainance of so much of the railroad of the said The Mount Vernon Railroad Company, as shall be located or situated within the said county of Wayne, and not otherwise.

And the said parties of the first part do hereby respectively assent and concur in and to the said transfer and delivery of the said construction bonds as herein provided for the purposes aforesaid, and they covenant that such application and appropriation of the same shall be to the amount and extent thereof in all respects an effectual fulfilment of the several purposes and trusts for and upon which the said lands and premises were conveyed and mortgaged.

And the said party of the third part doth hereby covenant and agree that he will receive, hold, and appropriate said two hundred of the said construction bonds of five hundred dollars each, and said three hundred of said construction bonds of one thousand dollars each, for and upon the sole and exclusive trust and purpose that the same or the avails
92 thereof shall be only expended, sold, assigned, transferred, or delivered, for the construction, maintainance, and benefit of so much of the railroad of the said The Mount Vernon Railroad Company as is now or shall be hereafter situated or located in the county of Wayne aforesaid, and in no other place, and for no other or different object or purpose.

In witness whereof said parties have hereunto respectively set their hands and seals on the day and year above written.

The said The Mount Vernon Railroad Company having hereto affixed its corporate seal and caused the same to be attested by its president and treasurer.

S. J. B. WILSON, *Co. Judge.* [ ]
THOS. M. SCOTT, *Associate.* [ ]
By S. J. R. WILSON, *Atty.*
Z. CASEY, *Pres. Mt. V. R. R.*
N. A. SMITH, *Treasurer* " " "
[L. S.] IRA HERSEY. [S.]

President Casey's order to deliver bonds.

NEW YORK, *June 15th*, 1859.

To N. A. SMITH,
Treas. of the Mt. Vernon R. R. Co.:

Please deliver to Ira Hersey, esq., three hundred of the one thousand dollar bonds of the Mt. Vernon R. R. Co.'s issue, as per contract entered into by and between the County of Wayne & the said R. R. Co., they being a portion of the four hundred thousand dollars to be had in trust by the said Hersey for said County of Wayne, as specified in said agreement. Also, please deliver to the said Ira Hersey, esq., two hundred of the five hundred dollar bonds as soon as the same are received by you, signed & sealed as *for* contract above, making in the aggregate four hundred thousand dollars, the said Hersey receipting to the co. for the same.

Z. CASEY,
Pres. of Mt. V. R. R. Co.

Hersey's receipt for bonds.

Received, New York, June 20th, 1859, from Dr. N. A. Smith, treasurer of the Mount Vernon Railroad Company, three hundred bonds (300) of one thousand dollars each, numbered from 300 to 600, inclusive, which bonds I hold in trust for said company, and for the County of Wayne, Illinois, as per agreement made with the said company, and Judges Million & Scott on the part of said county.

IRA HERSEY.

At a regular term of the county court of the county of Wayne and State of Illinois, began and held at the court-house in Fairfield, on Tuesday, the 14th day of December, A. D. 1859—

Present, Hon. S. J. R. Wilson, judge; Thos. M. Scott, associate; Wm. Irwin, associate; J. W. Barnhill, clk.; H. A. Organ, sh'ff, by R. S. Barnhill, dep'ty—

The following order was passed by said court, to wit:

Order of Wayne Co. court.

Whereas an order has passed by the board of directors of the
93 "Mount Vernon and Fairfield Railroad Company," asking the county court of Wayne County to withdraw the four hundred thousand-dollar bonds of the Mount Vernon Railroad Company, now in the hands of Ira Hearsy, of city of New York, and place the same in hands of the county court of Wayne County, or in the hands of any person that the said railroad company and the Wayne County court may agree upon:

It is therefore ordered by the court here that the said above-named bonds be withdrawn from the hands of the said Ira Hearsy, and held by the county court of Wayne County until such person shall be agreed upon by said company and the county court as aforesaid.

STATE OF ILLINOIS,
Wayne County, ss:

I, Oliver Holmes, clerk of the county court of Wayne County, Illinois, do hereby certify that the foregoing is a true and correct copy of an order passed by the county court of said county, on the 14th day of December, A. D. 1869. All of which as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court, at Fairfield, this 21st day of August, A. D. 1869.

[L. S.] OLIVER HOLMES, *Co. Clk.*

[5-ct. int. rev. stamp.]

Wilson's rec'pt for bonds.

THE MOUNT VERNON RAILROAD CO.,
TREASURER'S OFFICE, NO. 2 NASSAU ST.,
New York, June 18th, 1860.

Received from Chas. W. Lewis, treasurer of the Mount Vernon Railroad Company, three hundred bonds of one thousand dollars each, & two hundred bonds of five hundred dollars each. Same bonds as rec'd from Mr. Seymour on the joint order of Mr. I. Hersey & myself.

S. J. R. WILSON.

C. W. Lewis' receipt for bonds.

Copy of receipt.

NEW YORK, *June*, 1860.

Received from S. J. R. Wilson, three hundred bonds of Mt. Vernon Railroad Company, of $1,000, and 200 bonds of $500; total, 500 bonds; am't $400,000.00. Proceeds of said bonds to be applied to the building of a railroad through Wayne County, and incidental expenses & advances already made & required.

CHAS. W. LEWIS.

Letter of Wilson to Lewis.

FAIRFIELD, , 1860.

Mr. CHAS. W. LEWIS:

DEAR SIR: So as to forward as much as possible the obtain'g of money to procure the St. Louis & Louisville charter & build the railroad, you will furnish to Mr. Davis sufficient bonds on which to obtain loans to pay current expenses & incidental. Also, furnish Mr.
94 Hersey with those required to prevent impediment on his part in your operations, you to retain sufficient to cover your advances & expenses.

Yours, truly, &c*o*.

S. J. R. WILSON.

NEW YORK, *May*, 1861.

JNO. N. WHITNEY, Esq.:

DEAR SIR: I annex a list of the recognized bonds of the Mount Vernon Railroad Co.

Very respectfully,

CHAS. W. LEWIS,
Treas. Mt. Vernon R. R. Co.

List of recognized bonds.

5.	Five of	$1,000.	Nos. 317, 328, 329, 330, & 331.
25.	Twenty-five of	"	Nos. 526 to 550, inclusive.
6.	Six	" "	No. 1 to 5, and 64.
50.	Fifty	" "	551 to 600.
20.	Twenty	" $500.	Nos. 119, 126, 223, 233, 335, & 236 to 247, 218, 253, 256, 258.
50.	Fifty	" $500	" 299 to 346, inclusive.
2.	Two	" "	" 349–350.
2.	Two	" "	" 115, 116.
8.	Eight	" "	" 121 to 125; 127 to 129.
1.	One	" "	
1.	One	" "	

86 of $1,000.
84 " $500.

$819 74. NEW YORK, *Sept. 22d*, 1860.

At four months after date, the Mount Vernon Railway Company promise to pay to themselves or order, eight hundred & nineteen $\frac{74}{100}$ dollars, for value received, with interest at the rate of seven per cent.

per annum, having deposited with the holders hereof as collateral security, with authority to sell the same at the brokers' board, or at public or private sale, or otherwise, at his option, on the non-performance of this promise, and without notice, eight of the first land-grant bonds of said company, numbered 121, 122, 123, 124, 125, 127, 128, 129, respectively, and each for the sum of five hundred dollars.

MOUNT VERNON RAILROAD COMPANY.
CHAS. W. LEWIS, *Treasurer.*

(Endorsed:) "Mount Vernon Railroad Company. Chas. W. Lewis, treasurer. Letter."

OFFICE OF THE MOUNT VERNON RAILROAD COMPANY,
No. 2 Nassau st., New York, May 1, 1861.

I hereby certify that the following bonds of the Mount Vernon R. R. Co., are genuine and properly issued, and Isaac W. Seymour, esq., trustee, is requested to locate the lands held by him as such trustee for that purpose, upon the surrender of said bonds: Eight bonds of $500 each, Nos. 121, 122, 123, 124, 125, 127, 128, 129; one bond of $500, No. 258.

CHAS. W. LEWIS,
Treasurer Mt. Vernon R R Co.

95 *Indorsement of Wilson.*

"I authorize you to locate the foregoing bonds.

"S. J. R. WILSON."

(Indorsed:) Filed & opened, per stipulation on file, November 25th, 1869. J. A. Jones, clk.

In the circuit court of the United States for the southern district of the State of Illinois.

UNITED STATES OF AMERICA, *State of Illinois, ss:*

KENNICOTT ET AL.
vs.
SUPERVISORS OF WAYNE COUNTY ET AL. } Bill in chancery.

The depositions of Francis M. Sursa and Angus M. Grant, witness' produced and sworn and examined before John W. Baugh, a notary public in and for the county of Jefferson, and State of Illinois, duly appointed, commissioned, and sworn, pursuant to the stipulations hereto attached, to be used and read as evidence on the part of the complainants in a certain cause pending in the circuit court of the United States, within and for the southern district of Illinois, on the chancery side thereof, wherein Kennicott et al. are complainants, and the Supervisors of the County of Wayne et al. are defendants, taken at Mt. Vernon, Illinois, Feb. 4, 1870.

ANGUS M. GRANT, a witness of lawful age, being duly cautioned and sworn, testifies as follows:

Deposition of Angus M. Grant.

My name is Angus M. Grant; my age is 57 years; my residence is in

Mt. Vernon, Illinois; I have lived here 33 years; my occupation is that of a farmer; I was secretary of the Mt. Vernon Railroad Company from the spring of 1859, and kept all the books of said company that were kept in Mt. Vernon, (except one, which has been lost,) until this time; no one ever called on me officially for the books of said company; there has been no meeting of the board of directors of said company at Mt. Vernon since the year 1860.

Int'y 1. Please look upon the copy of a contract now shown you, and hereto attached, marked "Exhibit A," and state if it be a true copy of the original contract between the parties therein named, and if you were an active party in promoting the construction of the railroad therein named, and had opportunities of knowing the acts, doings, and progress made by the parties in their efforts to build said railroad.

Ans. I have seen the original contract and compared it with the copy hereto attached, and know said copy to be a true copy of said original. The original is not under my control individually or as secretary of said company, nor do I know whose control it is in. I took an active part in the construction of said railroad, and had good opportunities of knowing the acts and progress of said parties in their efforts to build said railroad, and of their contracts.

Int. 2. Now look upon the paper now shown you, hereto attached, marked "Exhibit B," and state if it be a true copy of the original
96 contract between Van Duzer, Smith & Co. and the County Court of Wayne County, for building a railroad from Mt. Vernon, through Fairfield, to the eastern boundary of Wayne County.

Ans. I have seen the original contract, and compared it with the attached paper, marked "B," and know it to be a true copy of said original. But said original is not under my control; neither do I know under whose control it is.

Int. 3. Please state all you now recollect and know in reference to the various contracts made by Van Duzer, Smith & Co., the Mt. Vernon Railroad Company, and the county of Wayne, directly or through its agents, relative to and with a view to carrying into effect the objects of constructing and operating the said railroad or railroads, and all you now recollect or know in reference to the manner of accomplishing these objects. State all the details as far as you are able.

Ans. Besides the two contracts above refer'ed to, as Exhibits A and B, Van Duzer, Smith & Co. sold and transferred the said two contracts to the Mt. Vernon Railroad Company, with a view and for the purpose of enabling them to build the said railroad or railroads. The Mt. Vernon Railroad Company issued 400 bonds of the denomination of $500.00 each, and 600 bonds of the denomination of $1,000.00 each, making a total of ($800,000.00,) eight hundred thousand dollars. To secure the said bonds, or the payment thereof with interest, the Mt. Vernon Railroad Company executed a deed of trust on its franchises and all its property to Isaac Seymour, as trustee. And for the same purpose, the county of Wayne executed a deed of trust and also a mortgage upon the swamp and overflowed lands of the county, to Isaac Seymour, as trustee aforesaid. The foregoing bonds, deeds of trust, and mortgage, each and all, bear date the 20th day of April, A. D. 1859. With a view to give said bonds negotiability, the said Mt. Vernon Railroad Company procured from the clerks of the circuit courts of Jefferson and Wayne Counties certificates that said real estate and property of the said railroad company were free and clear from all incumbrances. On or about the 27th day of April, A. D. 1859, the Mt. Vernon Railroad Company, the county of Wayne, and Ira Hersey, entered into an agree-

ment, wherein was recited the execution of the bonds, deeds of trust, and mortgage aforesaid, for the purpose of securing the payment of the said construction-bonds, to raise funds to aid in the construction of the railroad or railroads from Ashley, in Washington County, through the county of Jefferson, and to the east boundary of Wayne County. It was further recited that (200) two hundred of the $500.00 construction-bonds, and three hundred of the $1,000.00 construction-bonds should be set apart to aid in the construction of so much of the railroad or railroads aforesaid as lies in Wayne County. And it was provided that said bonds, last above referred to, should be placed in the hands of Ira Hersey, as trustee, for that particular purpose. And the application and the appropriation of the same should be to that amount and extent an effectual fulfillment of the several purposes and trusts upon which the lands and premises were conveyed and mortgaged. I have seen and read the original contract, last above referred to, but the same is not in my possession or control; neither do I know who does keep or control the same. In fulfillment of the last-named contract on the part of the Mt. Vernon Railroad Company, on or about the 15th day of June, A. D. 1859, the president of the said company ordered the treasurer of said company to deliver to Ira Hersey two hundred of the $500.00 bonds, and three hundred of the $1,000.00 bonds, and said bonds were accordingly delivered to
97 Mr. Hersey. Afterward, some time in the month of January, 1860, or about that time, S. J. R. Wilson, with the assent of the directors of the Mt. Vernon Railroad Company, changed the custody of the above-mentioned $400,000 in bonds from the possession of Ira Hersey to that of Isaac Seymour. During the month of January, 1860, while I and Judge Wilson were both in New York, and present as a part of the board of directors of the Mt. Vernon Railroad Company, a contract was entered into between said company and Uria Jameson, David Newcomb and James G. Elliott, for the purchase and delivery of four thousand and eight hundred tons of railroad bars, at fifty-eight dollars per ton, the first installment of which, of five hundred tons, was to be delivered on the 1st day of March, 1860. For the purpose of getting money to meet the installment of iron, on the 1st day of March, 1860, aforesaid, an arrangement was made with a Mr. Morris, owner of the Whitfield Bank, of Dalton, Georgia, for about $21,750 00, which he then gave to them, and for which he received construction bonds of the company, either on a loan of the money and hypothecation of the bonds or sale; and I do not recollect which at present. Judge Wilson was present, assenting all the time to this arrangement. The above contract for iron and the arrangement with Mr. Morris were duly reported to the board, and was by said board approved. Mr. Charles W. Lewis was appointed treasurer of said company on or about the 11th day of May, 1860. Some time in the spring or early in the summer of 1860, the said bonds for $400,000 were taken from the custody of Isaac Seymour upon the order of Judge S. J. R. Wilson and Ira Hersey, and delivered to Mr. Charles W. Lewis by Judge Wilson, some time in June, 1860. Judge S. J. R. Wilson afterwards directed Mr. Lewis to deliver to Mr. Davis sufficient bonds on which to obtain loans to pay current expenses and incidentals, and to build the railroad, and to furnish Mr. Hersey with bonds required to prevent any impediment on his part; and also directed him to retain sufficient bonds to cover his advances and expenses. The above-named $400,000 in bonds have been subject to the control of the said county of Wayne ever since they were issued, or until they were disposed of by said county.

Van Duzer, Smith & Co. employed Gustavus Wagoner as engineer

on the line of said railroad, and he commenced the survey and location of the line in the fall or winter of 1858, and prosecuted the same from Ashley into Wayne County, nearly if not quite to Fairfield. Some time in the winter or spring of 1859, Mr. Wagoner was dismissed, and L. J. Germain was employed as engineer-in-chief. He resurveyed the line from Ashley through Mt. Vernon to Fairfield, and finished the same to the eastern boundary of Wayne County, and located the same to the Little Wabash River, seven miles east of Fairfield, leaving the location thence to the eastern boundary of Wayne County to be fixed by the board of directors, as they might determine whether they would proceed with the railroad to Grayville or Mt. Carmel.

There was a great deal of work done on said railroad or railroads, and a great many ties prepared and delivered along the line, a number of culverts made, and some bridges also. There was a profile of the line made by the engineer and kept in the engineer's office. There never was any instrument or evidence filed with me, as secretary of said company, nor did any knowledge ever come to me of the transfer of the charter of the St. Louis & Louisville Railroad to the Mt. Vernon Railroad Company, or to Van Duzer, Smith & Co. by the procurement of Wayne County.

A. M. GRANT.

98 Subscribed and sworn to before me this 4th day of February, A. D. 1870.

J. W. BAUGH,
Notary Public.

Engineer's report to Mt. Vernon R. R. Co.

Engineer's report.

To the president and board of directors of the Mt. Vernon Railroad Company.

GENTLEMEN: On assuming the office of engineer of your works I have thought it not unfit that I make to you an exhibit of the condition of the affairs pertaining to the engineering department at the time of my assuming its direction.

Maj'r Waagner, my predecessor, having made the preliminary surveys and partial locations of the line of your works from Ashley, on the Illinois Central Railroad, via Douglass, Mt. Vernon, Vandozer, Middleton, Seymour & Scott to Fairfield, distant about miles on the route proposed to be built upon, to the east line of Wayne County, as per contract with the county court of that county, my duties have been made less arduous in prosecuting the surveys and determining upon the final definite location of your line.

The general line selected runs about one mile north of and nearly parallel with the line between townships 2 & 3, & south of base line via Douglass, 15½ miles, to Mt. Vernon, the county-seat of Jefferson County; thence deflecting one mile south and seven east to Vandozer, at the head of More's Prairie, distant 22 $\frac{7}{10}$ miles from Ashley; thence due east on the ½-mile line 6 miles, to Middleton, distant 28½ miles from Ashley; thence bearing northeast by east via Seymour (Six-mile Prairie) & Scott, (Arrington Prairie,) crossing the Skillet Fork and Dry Fork, 16¾ miles, to Fairfield, distant 45¼ miles from Ashley; thence deflecting to the south of east via Wilson, & crossing the Little Wabash River, eleven

miles, to the east line of Wayne County, distant 56¼ miles from Ashley. The location of line east of the Little Wabash (seven miles east of Fairfield) will depend upon your determination to extend your road to Greyville or to Mt. Carmel on the Big Wabash River.

The route indicated above crosses the West, Middle, and East Little Muddy Creeks, the Skillet Fork of the Little Wabash, & the Dry Fork of the Skillet. These several streams will require bridges of from 80 to 150 feet, single spans. Only two, however, will require to be built with spans over 100 feet. As these several streams might be characterized as sluggish they do not present any formidable engineering obstacles. Good foundations can be obtained in every instance.

There are no considerable elevations to be overcome by gradients either way. The topographical characteristics of the district of country traversed are those of broad bottoms and "rolling swells," rising and declining with long and gentle slopes, the minute topography of which an inspection of the accompanying profile will afford, to which your attention is invited.

The rates of grades, which my predecessor deemed it expedient to adopt, seem to me to have been well considered, as the maximium, $\frac{120}{10000}$, is only one-half the rate adopted on the Illinois Central between Centralia and Cairo; I have fixed that as one maximum rate. Hereafter, however, should it be thought advisable, a maximum of $\frac{80}{10000}$ can be worked to without departing from your second roadway and without an excessive additional expense. At present the adoption of the higher rate obviates a considerable expenditure most desirable to save, and is in accordance with your instructions.

99

The plans for bridges, which have been adopted, and are recommended, are such as have been built upon, and are now in use on first-class roads in this State; such as on the Illinois Central Railroad, the Galena & Chicago, and others. For details, see the office files.

The plans adopted for culverts, cattle-passes, cattle-guards, and small drains are essentially the same as are upon the 1st division of the Galena & Chicago Union Railroad. These have been proved to be sufficient, durable, and cheap, every way answering the purpose designed. Your works have this advantage over them, that the timber material (if possible) is of superior quality. Every attention and care will be given to the making the foundations permanently secure, where nature has not made them such.

The material to be removed from the "cuts" is generally composed of a porous loam, of a subsoil composed of ferruginous, sandy clay, such as on exposure would form a rich soil; or in some few instances and of small extent a rotten shale or "bastard limestone" has been found to occur in the bottoms of excavations—the first requiring nothing but the shovel for its removal; the second yealding easily to the plow, and the latter requiring no powder for its upheaval, and all affording excellent material for embankments. Much of the grading will be surface work. The castings from the side ditches being sufficient and of that kind of material which has been found to make the best of roadway; not liable to wash and of easy drainage.

From the slightly undulating "lay" of the district of country traversed by your proposed work, excellent facilities are afforded for ample and complete drainage, the cuts being of short extent and having declining gradients. Less than the usual expense and annoyance may be anticipated in keeping them thoroughly drained. I have revised and established the grades in every instance with a view to this object as well as to that of overcoming the elevations and depressions, and to a

due regard to economy in construction. The first consideration has not always received that weight in plans of construction which a due regard for an economical operation of railroad in my opinion seems to demand from the constructing engineer.

With regard to the quality and abundance of the timber to be used & used in the structure of your road, I cannot speak in too high terms. In all my experience as an engineer I have never before had the satisfaction to have such excellent material with which to build. With proper, ordinary they may last in full use throughout the period of 70 years allotted to man; I do not modify what I have above stated, only so far as the durability of the cross-ties are concerned. But as for size, soundness, and toughness of texture, these have not, to my knowledge, been anywhere surpassed, when properly laid and bedded. They will afford a most firm and solid support for the iron track and passing trains.

It may not be inappropriate that I give my professional views in regard to the position of the line of your road in the reticulation of similar public works wrought or being wrought for the accommodation and development of the trade and travel of the industrial field which owns St. Louis and Chicago as its centralizing, middle marts *marts* and markets which dispense supplies to, and receive products from, a greater extent of unimpoverished producing country (by nature rich) than any other two inland American cities, if not any other two cities of the world. While "westward still the course of empire takes it way," yet, as surely must its surplus products seek for a final disposal and consumption in the older and more populous quarters of the continent, however distant at present by the way of the east, eventually as will by the way of the west.

While our interior is surpassing rich in its native soil, in its forests, and mines, and quarries, the older and distant is richer in human muscle and accumulated wealth. Its operators and merchants will send their manufactures and imports to us, and their uneasy, crowded population, will send off their crowds to fill our coming and going trains. The time was, and that not long ago, when the sagacious engineer might estimate the proximate amount of traffic and travel which would naturally seek any proposed work of internal improvement. But that day is passed. His works are not the only element which are to bring prosperity. Other great helpers are in the field, and in the laboratory. Those mistic eggs—which were symbols on the monum'ts—are being incubated; and steam-ploughs, and reapers, and planters, and other engines, emulate the locomotive in power and usefulness, come out full fledged, and work to change the wilderness into producing fields, whose accumulating products crowd his depots to repletion, and overtask his trains. I congratulate myself in that your committee had attempted this task, usually assigned to the engineer, before my assuming the position I hold, and that such estimate is not called for at my hands, for here, in what the simple or malignant call "Egypt," jeeringly, nature has given you every advantage, and more than those the land of the Pharo's and the pyramid's ever possessed. But with a want of improvement which might beggar that of the older before the first Phar'o' ever reigned, you have a climate as genial to vegetation, more salubrious to health, such forests of timber as are not anywhere else excelled, mines of purest iron and cobalt, quarries of freestone, lime, cement, and beds of marl, continuous workable beds of bituminous coal, pure water, and an abundance of it. The various fruits ripen here with a lusciousness that the most favored of other sections of our land might envy. What shall be said of the state of your

condition when your progressing improvements shall place you on the direct line of eastern and western travel and trade? The time will soon be (if you are suc'essful in the accomplishment of the designs which you have laid down) when no small modicum of the commerce of continents shall trundle by and over your lines, when your farmers, and merchants, and mechanics, shall be brought (in effect) as near to New Orleans and St. Paul and New York as they are to Ashley to-day, when they may avail themselves of the markets at the South and North, and of the East and West—your committee have attempted to tell. It appears to me that there is little apprehension of over-estimating the amount, provided you build wisely and well.

Below (A) I have tabulated the amount of expenditures on amount of construction, engineering, office, & for directors, within as exact amount as the data within my reach has enabled me to present.

Estimates of future operations are necessarily postponed to another time, to be laid before you at your call.

The proportionate amount of grading done is plainly exhibited in the colum'ed profile now before your committee, & which will be revised as the work progresses. All of which is respectfully submitted by yours, very truly,

L. J. GERMAIN,
Ch'f Eng'r Mt. V. R. R. Co.

MT. VERNON, *May 2nd*, 1859.

101 APPENDIX A.

Am't construction ac. to May 1st, 1859:

Grading ac		$	
Bridging & culverts	ac	"	
Cross-ties	"	"	
Lumber for structure		"	
Cleaving line		"	$
Chartering & traveling expe's		$	
Agencies	"	"	
Office	"	"	
Engineering	"	"	"
Total expenditure			$

(Here follows map, marked "page 356.")

FRANCIS M. SURSA, being produced, cautioned, and sworn according to law, testifies as follows, to wit:

Int. 1st. What is your name, age, and place of residence, and occupation?

Ans. My name is Francis M. Sursa; my age is 40 years; and my place of residence is Mt. Vernon, Illinois; and my occupation is that of laborer. I was employed during parts of the years 1858 and 1859, by Van Duzer, Smith & Co. and the Mt. Vernon Railroad Company in assisting the corps of engineers in surveying and locating the line of a railroad from Ashley, in Washington Co., through Mt. Vernon, in Jefferson County, and Fairfield, in Wayne County, to the eastern boundary of Wayne County, in the State of Illinois. Said line was located, as I understood it at the time, and I know that there was more or less work done on the whole line of said railroad, by said Van Duzer, Smith & Co. and Mt. Vernon Railroad Company. There was a great deal of

work done on said railroad. The grading was nearly *on* done from Ashley to Mt. Vernon, and some grading was done at Fairfield; the line was chopped out and the large timber grubbed nearly through the whole line, and the ties were prepared and drawn to the line nearly all the way from Ashley to some distance in Wayne County, and through the bottom of Skillet Fork Creek, and other ties through the timbered country nearly all the way to Fairfield.

F. M. SURSA.

Subscribed and sworn to this 4th day of February, A. D. 1870.

J. W. BAUGH,
Notary Public.

STATE OF ILLINOIS,
Jefferson County, ss:

I, John W. Baugh, a notary public in and for said county, do hereby certify that the above depositions were taken by me on this day at the "supreme court house," in Mt. Vernon, in said county and State; that the complainants in the cause appeared, by Hon. W. B. Scates, their solicitor, and that no one appeared for the defendants; that said witnesses, Francis M. Sursa and Angus M. Grant, before any interrogatories were put to them, were each by me sworn to speak the truth and the whole truth in the case pending in the circuit court of the United States for the southern district of Illinois, wherein Ken-
102 nicott et al. are compl'ts, and The Supervisors of Wayne County et al. are def'ts; and that after said depositions were by me reduced to writing and read in their hearing respectively, they each subscribed their name to their respective depositions, and said on their oath that the matters therein contained were true. And that said depositions were taken pursuant to the stipulations hereto attached.

In testimony whereof I have hereunto set my hand and notarial seal at Mt. Vernon, this 4th day of February, A. D. 1870.

[L. S.]

J. W. BAUGH,
Notary Public.

[5-ct. int. rev. stamp, cancelled.—J. W. B., 4—2 '70.]

(Indorsed:) Filed and opened at request of Messrs. McClernand & Broadwell, February 15, '70. J. A. Jones, clk.

Deposition of Grant.

The deposition of Angus M. Grant, taken at Mt. Vernon, in the county of Jefferson, and State of Illinois, on the third day of November, A. D. 1870, before John W. Baugh, a notary public in and for the county of Jefferson and State of Illinois, at his office in Mt. Vernon aforesaid, in pursuance of a stipulation of the defendants' attorneys, the original of which is attached to the deposition of Richard L. Boggs, taken before James McCartney, a notary public for Wayne County, Illinois, on the second day of November, A. D. 1870, a copy of said stipulation being hereto attached. Said deposition to be read as evidence in the case now pending in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott et al. are complainants, and The Board of Supervisors of Wayne County are defendants.

Deposition of Angus M. Grant.

ANGUS M. GRANT, a witness of lawful age, being produced, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, as far as he may be interrogated by either of the parties, testifies as follows, to wit:

Interrogatory 1. What is your name, age, and place of residence?

Ans. Angus M. Grant is my name; my age is 58 years; and my residence is in Mt. Vernon, Illinois.

Int. 2. Are you acquainted with I. T. Van Duzer, N. A. Smith, B. L. Voorhees, John R. Satterfield, S. W. Carpenter, W. Adams, Joel Pace, Z. Casey, H. B. Newby, W. Duff Green, John C. Gray, H. T. Pace, A. M. Grant, Wm. B. Anderson, S. T. Stratton, John R. Allen, John S. Bogan, E. P. Grant, James Westcott, Thompson Angler, Edward McAtee, John Waite, A. P. Elkins, Samuel Gibson, James B. Tolle, David Stewart, Thomas H. Hobbs, Richard S. Nelson, John S. Blake, J. N. Brookins, B. F. Brewer, and D. Z. Warren; and how long have you known them, and are you acquainted with the handwriting of them?

Ans. I am acquainted with them, and have known them from twelve to thirty years, and am acquainted with their handwriting.

Int. 3. Please look upon the contract now shown you and hereto attached, and marked "Exhibit No. 3," and state if the signatures thereto are the signatures of the parties purporting to have signed the same.

Ans. I am satisfied they are.

103 Int. 4. Are you acquainted with L. J. Germain; and if so, how long have you known him, and are you acquainted with his handwriting?

Ans. I am, and have known him since the year 1859, and know his handwriting.

Int. 5. Look upon the paper now shown you and hereto attached, and marked "Exhibit No. 13," and state if the signature thereto of L. J. Germain is his genuine signature, and state the relations that subsisted between you at the time.

Ans. The signature is genuine. I was acting as a director of the Mt. Vernon Railroad Company, and also secretary of the board of directors of said company; and said L. J. Germain was chief engineer of said company, and, as such chief engineer, made said report, (Exhibit No. 13,) and filed the same with me as secretary aforesaid.

Int. No. 6. Look upon the paper now shown you and hereto attached, marked as "Exhibit No. 17," and state if you are acquainted with the parties thereto, and if the signatures thereto are the signatures of the parties. State all you know in relation to the same.

Ans. I know Van Duzer and Smith, and was introduced to Mr. Gulick at Mt. Vernon, Jefferson Co., Ill's. I don't know Major. The signatures of Van Duzer and Smith are genuine. Van Duzer and Gulick told me that he, Gulick, and some other man had a contract for work on the Mt. Vernon Railroad, and Gulick did some work on the road. This was in the latter part of the year 1859, or first part of 1860, or about that time.

Int. No. 7. State, if you know, where Ira Hersey's residence was in the year 1859, and where it is now, and if he ever, to your knowledge, resided in the State of Illinois; and is his signature, as witness to the said Exhibit No. 17, genuine? Do you know Mr. Hersey? If so, how long have you known him, and are you acquainted with his handwriting?

Ans. I know Mr. Hersey, and have known him since the year 1859. We were both members of the board of directors of the Mt. Vernon Railroad Company at the same time. I am acquainted with his handwriting, and his signature to said exhibit is in his handwriting. In 1859 his residence was in New York City, and, as far as I know, he lives there yet. He never lived in the State of Illinois, to my knowledge.

Int. 8. Look upon the paper now shown you, marked "No. 14," as exhibit and hereto attached, and state if you ever knew Mr. Ezra Baldwin; and if so, state all you know in relation to his residence, in 1859 and now; whether you know his signature, and give your means of knowledge.

Ans. I never knew him nor his residence at any time, nor his signature. I have lived in the State of Illinois 34 years, and acted as deputy under two different United States marshals, and have had a pretty general acquaintance in the State, and have never known any such man as the subscribing witness, Ezra Baldwin, living in the State of Illinois.

Int. 9. State if you know the parties to the contract, and if you are acquainted with their handwriting, and are the signatures thereto genuine?

Ans. I know all of the parties but John T. Harley. I am acquainted with the handwriting of all but said Harley. The signatures of Smith, Hersey, & Kendrick are genuine. That of L. D. Crippen and I. T. Van Duzer I believe to be in the handwriting of N. A. Smith.

104 Int. 10. Look upon the contract now shown you and marked "Exhibit No. 15," and hereto attached, and state if you are acquainted with the parties thereto, and how long have you known them, and are you acquainted with their handwriting? and if so, state if their signatures to said contract are in their handwriting.

Ans. I can't state that I know but two of said parties, to wit, U. Jameson and L. D. Crippin. I have known them over ten years and their handwriting, and their signatures to said contract are in their handwriting. The other parties to said contract I do not know; neither do I know their handwriting.

Int. 10. Are you acquainted with Thomas L. Davis, the subscribing witness to the above contract? If so, state if you are acquainted with his handwriting and his place of residence, and whether he now resides in the State of Illinois.

Ans. I know a Mr. Davis, who was in some way connected with the company and railroad matters, but do not know his Christian name, nor his handwriting. I think he lived, in 1860, in Buffalo, N. Y. I have no knowledge of him ever having lived in the State of Illinois.

Int. 11. Look upon the assignment hereto attached, and marked "Exhibit No. 5," and state if you know the parties thereto, and the subscribing witness to the same; and if so, how long have you known them, and if you are acquainted with their handwriting, respectively; and if so, are the signatures thereto in their respective handwriting? State, also, where the subscribing witness, George G. Rockwood, now resides, and whether he now resides in the State of Illinois.

Ans. I know all the parties to said assignment. The subscribing witness I do not know, to the best of my knowledge. I have known the parties to said assignment from ten to 34 years, respectively; am acquainted with the handwriting of the parties, but not of the witness; the signatures of Voorhies, Casey, & Smith are in their own handwriting; that of Van Duzer is in the handwriting of B. L. Voorhies; I know nothing of the residence of George G. Rockwood; I never knew of him residing in Illinois.

Int. 12. Look upon the contract now shown you hereto attached, marked "Exhibit No. 7," and the orders now shown you and hereto attached, marked as Exhibits "8" and "12," and the receipts now shown you and hereto attached, marked as Exhibits Nos "9," "10," and "11," and state if you are acquainted with the parties thereto, and the makers thereof, respectively; if so, how long have you known them, respectively? State, also, if you are acquainted with their handwriting, respectively; and if so, state if their signatures thereto are genuine.

Ans. I am acquainted with the parties to and makers of said orders, and receipts, and contract, and have known them respectively from ten to 34 years; and am acquainted with their respective handwritings; and their signatures thereto are genuine.

Int. 13. Were you acquainted with Isaac Seymour, the trustee in the deed of trust from the Mt. Vernon Railroad Company, and the deed of trust and mortgage from Wayne County; if so, how long have you known him, and where did he reside? State further if Mr. Seymour is still living, or if not, when did he die?

Ans. I was introduced to him in New York in January, 1860, and had several conversations with him there in a bank. He resided there in New York, and was cashier of the Bank of North America. From
105 the best of my information he is not living, and I think he has been dead some seven years; I saw his death announced in a newspaper.

Int. 14. Had you, as secretary of the Mt. Vernon Railroad Company, a plat of the line of the Mt. Vernon Railroad from Ashley to the eastern boundary of Wayne County, made by the engineers of said company? If so, please produce the same, and make it an exhibit in this case.

Ans. I here produce this plat or profile, marked "Exhibit A," (attached to this deposition,) which I found among the papers in the office of the engineers of said company after the engineers left.

A. M. GRANT.

Subscribed and sworn to before me this 3rd day of November, A. D. 1870.

J. W. BAUGH, *N. P.*

Affidavit of M. Hay.

JNO. W. KENNICUTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al.

In the circuit court of the United States for the southern district of Illinois.

MILTON HAY, of council for the complainants in the above-entitled cause, being duly sworn, deposes & says that the originals of these several deeds executed by the county court of Wayne County, Illinois: one executed to Charles Wood, and bearing date 13th of March, 1856, and conveying the lands described and set forth in the copy thereof, herewith exhibited, marked respectively 1, 2, 3, and the two others bearing date 29th of April, 1859, executed by said county court to Isaac Seymour, and conveying the lands described in the copies thereto herewith exhibited, are neither of them in the power or control of the par-

ties complainant in this cause, nor of either of them, as he is advised and *and* believes.

And further he says not.

MILTON HAY.

Subscribed and sworn to before me this 8th day of Nov., 1870.
J. A. JONES, *Clk.*

(Endorsed:) Filed November 8th, A. D. 1870. J. A. Jones, clk.

Testimony—Evidence of Walter B. Scates.

WALTER B. SCATES, sworn:

I merely propose to stat' the search I have made for papers and documents, &c., of the Mount Vernon R. R. Co., including contracts, &c. All the original papers that belong to the transaction that I supposed would be in the custody of the company, or some of its officers, I have searched for them, and when individuals had no offices, I went to the persons themselves. I saw Mr. Grant two or three times, who is the secretary, and got him to make search among all the papers that were left with him, for any original contract that might be in his possession. I found none. I also had him search once or *or* twice for a little book. I don't suppose it was bigger than this (pointing to a thin octavo book on the table,) in which the original minutes of the Mount Vernon Railroad were entered, beginning 1855, some time in the spring, a part of which minutes were transcribed into a book, which the contractors kept after they came on and took the contract.

Search for papers.

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In 1858, a portion of these minutes were transcribed, and are now in the Exhibit A, beginning with the election of the first board of directors. That portion of it has been transcribed into the book I found there, and I got these minutes there. But the original book in which the minutes were entered—minutes of the organization, &c.—is the one I was in search for particularly, and the one referred to in Grant's deposition, as having been given to the lawyers there, in some suit connected with the railroad.

Transcript in Exhibit A.

Original book.

Mr. GOODWIN. That was a small one?

Mr. SCATES. It was, yes; the same one referred to by Mr. Smith. I state this merely to describe the book. Mr. Grant said it was given to some of the lawyers bringing suit there. There was a suit brought to the supreme court, and the supreme court reversed it, contrary to their expectations. So I went to Judge Pollock, who acted as solicitor in bringing that suit. I went to Thomas F. Casey, a director, who, I thought, was likely to know about it, and T. B. Tanner; to John S. Bogan, the clerk of the circuit court; to William Dodds, clerk of the county court; and to Joel Pace, trustee in this case. I went to all these in search of these papers. I inquired of Joel Watson, county clerk at that time, and to Harvey T. Pace, inquiring for this book; had the county records searched, the files searched, to see if it had been there; directed the lawyers to look in their offices, and the directors also. And I have been unable to find the book among the whole of them. The last

What Grant said.

Further inquiries.

trace I could get of the book was from Mr. Grant, who said *said* it had been lent to the lawyers. I went to New York, and called upon Charles W. Lewis, who was the last treasurer of the company, and asked him for the papers in the case, and any records he might have in the case; and his answer was that he had quit business in New York some years ago; went to New Orleans, and directed his books to be packed in a trunk, and sent to him in New Orleans; that they were so sent; and, after he left New Orleans and went back to New York, the trunk remained behind, and he did not know where the papers were, unless in that trunk; and he promised to write and ascertain, and that is the last I got from him.

Last trace of book.

Papers in the case. How obtained from Mr. Lewis.

That is the way we got on the trail of the papers; so much we have produced. And now as to the reason we are so late: Going over all we had that had any pertinancy to the case, I thought it best, and went to New Orleans, and examined, and consulted, and this is all that I have been able to find. Searched over New York and New Orleans, Wayne County, Mount Vernon, where I supposed the papers might be, and of what we have found, anything (if we think pertinent) that we have not yet introduced, we will do so now.

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Recapitulation.

I am through for the present.

The COURT. Gentlemen, cross-examine him on those points, if you wish to do it.

Cross-examination:

Mr. FREEMAN. If I understood you correctly, Judge Scates, the minutes you have exhibited here do not purport to be copies from the original book, but from the book into which, I suppose, the original was transcribed—a copy of a copy?

Cross-ex.

Mr. SCATES. It is the original book. Vanduser, Smith & Co. took the contract, and became the railroad incorporators. This book we got these from, is the book they kept; having one or two papers of the original minutes transcribed into it.

Original minutes.

The COURT. Did you speak of another original book?

Mr. SCATES. Two original books: this beginning 1858, the other——

The COURT. This book has transcriptions; but the original of this book?

Mr. SCATES. The transactions of '55. This from a copy copied from the original minutes.

Copy of a copy.

Mr. FREEMAN. Not as originally made?

Mr. SCATES. Don't know whether in that original book or not; I suppose they are; I suppose that portion of it may be in the other book; I suppose it is; it ought to be; but when the board of directors' contractors became a corporation, they transcribed them into this, so as to complete the organization on the book.

Mr. FREEMAN. All I want to get at clearly is that the book in which these copies were taken was not the original book of record, but was a transcript, as you suppose, from the original.

Mr. SCATES. They are from the book, or from the original minutes; that might have been; and preserved up to that time. Don't know which, but I presume that it is lost. It ought to be there. Both original books, though.

Mr. FREEMAN. As to who made that in which that transcript was, you do not know?

Mr. SCATES. Who transcribed it, we do not know.

Mr. FREEMAN. We make a point there; this is a copy of a copy.

The COURT. What is the object of this testimony; to show the contents of the original book?

Contents of original book.

Mr. SCATES. Upon that we offer Mr. Pace's testimony, and Dr. Smith's testimony, and the recitals of these deeds that we have offered for that purpose. They, I think, cannot be gainsaid.

The COURT. You want to produce the copies and the original book?

Mr. SCATES. The original transactions we suppose are in that book.

How to prove proposed.

108 Mr. FREEMAN. But the book from which these are taken is in existence, and can be obtained. This is copied from that second transcript.

The COURT. Do you want to introduce anything on that ground?

Mr. SCATES. That is all.

The COURT. Part of that was transcribed into this original by Grant? He speaks of it as being transcribed.

Mr. BEECHER. Didn't make the copy from the old book.

Mr. FREEMAN. Copy of a copy.

Mr. BEECHER. He finds a book among other papers, and from that he copies this; but that Judge Scates produces here. It is a copy——

Mr. STUART. You don't want to show any more than to lay a foundation for Pace's testimony?

Mr. SCATES. I want to show facts. I don't know whether they are in that book or not; they ought to be there; I suppose they are in that book, but I want to show the original transaction. Pace's testimony and Smith's testimony—I read them both yesterday. I want to lay the foundation now by the search. I think, maybe, this is the one. Gentlemen, I show you so much of this exhibit as pertains to the original minutes of '55. It is continued on the first and second and third and fourth pages of this exhibit. It is what I suppose might have been transcribed in the book that is lost. It is so much as relates to the commissioners' action in collecting subscriptions to the stock.

Charley Pace.

Mr. BEECHER. It is signed by Charley Pace, as secretary?

Mr. SCATES. I am under the impression Charley might have been called in. I wrote to Mr. Baugh to get his recollection if he had any minutes. It had all passed out of his memory.

The COURT. Is he living yet?

Mr. SCATES. Yes, sir; he is alive.

Mr. FREEMAN. Allow me—you don't know whether that is a copy from the records or not?

Mr. SCATES. I do not. I know it has been the supposition that the minutes ought to have been kept in that book. This is on the book of direction. They kept a book after Vanduser, Smith and Company came in.

Mr. FREEMAN. This a copy from that book?

Mr. SCALES. Yes; in that book we find so much as contains the organization of the original company of '55. This begins the action of the new board, Vanduzer, Smith & Co., and all that is on the book is in this exhibit; some that is impertinent to this case too. New York record book.

Mr. FREEMAN. Whose handwriting? Not in the handwriting of the secretary?

Mr. SCATES. I don't know; don't know in whose handwriting. Baugh was the original secretary. I didn't see the original minutes.

Mr. MCCLERNARD. Let me ask you one question: Are those taken from the original minutes of the company?

109 Mr. SCATES. They are from the original books kept by the Mount Vernon Road after Vanduser, Smith & Co. came in.

Mr. MCCLERNARD. Taken from the original book of the Mount Vernon Company?

Mr. SCATES. I can't say that this ever was the original book in which the original minutes of '55 and '56 were transcribed. I know it was the intention to keep a book, and Grant says there was a book. I suppose that is all I know.

Mr. GOODWIN. Grant swears they kept them in that book.

Mr. MCCLERNARD. Were those minutes taken from a book in the hands of Mr. Grant, the book being that of the Mount Vernon Railroad?

Mr. SCATES. Yes, sir; it is the original one.

Mr. FREEMAN. That book is in existence, accessible to you?

Mr. SCATES. I had access to see it.

Mr. STUART. I understand you to say that you don't know anything, of your own knowledge, about that original book, more that what Grant says, that he transcribed it? Grant's testimony.

Mr. SCATES. Not able to say that I ever said it.

Mr. STUART. He known nothing personally, then?

Mr. MCCLERNARD. You found one book an original book?

Mr. SCATES. Yes.

Mr. FREEMAN. What I want to get at is, isn't that in existence? If so, it can be brought here.

Mr. SCATES. Mr. Grant has this book to-day, I suppose.

The COURT. The point is whether you should produce that or sworn minutes. That is the point, whether sworn minutes is evidence. That I won't undertake to say now.

Mr. SCATES. I say again, it was either transcribed from a previous book, in which the minutes were entered, or they are upon the book itself. I never saw that original book; couldn't find it.

Mr. STUART. That transcript of record, in the book now kept by the company, in whose hand was that transcript made? Handwriting of New York (record) transcript.

Mr. SCATES. Can't tell you, sir.

Mr. STUART. In Grant's?

Mr. SCATES. I think I asked Mr. Grant, and I don't think he knew.

Mr. STUART. It wasn't in the handwriting of this secretary?

Mr. SCATES. Can't say.

Mr. STUART. Beecher and you examined that book?

Mr. SCATES. We saw it, and probably tried to pass some opinion. Goches was the first secretary; Grant was his successor. Don't think Mr. Grant knew.

Mr. MCCLERNARD. Baugh was the predecessor of Mr. Goches?

Redirect. Mr. SCATES. Think Baugh left the county before Vanduser, Smith & Co. come to contract. That is my recollection.

New York record offered. 110 We now offer, gentlemen, the original book of this board of directors of the Mount Vernon Railroad Company, under these parties, Vanduzer, Smith & Co., so far as the board of government was kept in New York. The one I got that from was kept at Mount Vernon. This is when they made a secretary pro tem., and kept a minute of their corporate doings, there in New York.

Mr. STUART. Save an objection to that.

Objected to. Mr. SCATES. Only one or two entries of that which I want to read.

I wish to state another fact: I wanted to prove by Mr. Grant, and I am not able to say positively; George G. Rockwell subscribed first to one of these contracts. Mr. Grant didn't know, or know his residence. I was informed that he lived in New York. I find, looking over the minutes, that he was one of the board of directors, and when the meeting was held in New York he was appointed secretary pro tem. To the best of my information, George G. Rockwell is a resident of New York. I don't know his handwrite, but I saw he subscribed to these minutes as secretary pro tem. If a comparison is allowed——

George G. Rockwell, sec. pro t.

Mr. KNAPP. Who identifies the book, Judge Scates?

Mr. SCATES. I only state this: that it is the book I got with the original papers I found in New Orleans. The face of it gives identity enough to it—the contents of it. I was informed by the former treasurer, Lewis, that the books and papers were in New Orleans. He packed them up and sent them to New Orleans. I got on the trail of the papers that belonged to the case, and that was among them. As to any questions about them, I will ask to have Mr. Hodges sworn.

Book. How obtained.

Mr. KNAPP. Where did you get it?

Mr. SCATES. Got it from Mr. Hodges.

From Mr. Hodges. Mr. KNAPP. Didn't know that a book of that sort would prove itself.

Mr. STUART. We object to that, because it is evidently all in one handwriting, signed in one way. They profess to have signed that.

Mr. GOODWIN. Probably a list of directors.

The COURT. Perhaps he is giving the names as names of those persons.

Mr. SCATES. So many persons, of course. It is the secretary. Grant signs that as secretary. There is Gra——

Grant's signature.

Mr. MCCLERNARD. Judge Scates, a question: Do you know Mr. Grant's signature? Is it there?

Mr. SCATES. Yes, here is one; he signed as secretary. When he was in N. York he acted as secretary. Here is one—there is another. Mr. Grant served here—he was then in New York.

Mr. MCCLERNARD. Was he in New York at that time?

Mr. SCATES. Yes; so he says.

AFTERNOON, 2 *o'clock.*

Afternoon second day, 2 o'c.

WALTER B. SCATES re-examined:

Mr. Scates re-exam.

Mr. MCCLERNARD. One question I wish to ask you, Judge Scates: Did you ever have anything to do with the Mount Vernon Railroad Company?

111 A. Yes; I helped organize it. I was elected one of the board of directors in the spring of '54.

Q. You presided in '55?

A. Yes.

Consolidation Mt. C. & Mt. V. Roads.

Q. Do you know, sir, whether any connection or consolidation of the Mount Carmel and Mount Vernon Railroads was effected; and if so, when?

Objection.

Mr. KNAPP. That question is objected to.

The COURT. Any arrangement between them?

Mr. KNAPP. Any arrangement for running trains? Yes.

Mr. STUART. We wish to preserve our objection.

His recollection of the meeting.

Mr. SCATES. I would state that there was a meeting of the two companies at Mount Vernon—of the Mount Vernon and Fairfield Companies. I recollect very distinctly that Henry Goedeking there, and Harvey T. Pace, directors in that Belleville Road. They were incorporated as the first directors. They went with the Mount Vernon Railroad Company. The meeting was held over Joel Pace's store. The object was to form a connection under the Mount Vernon charter. I drafted whatever was drafted for the joint boards. They were adopted, and if I knew how to draw what was wanted, I drew such as would form a connection, according to my idea of the Mount Vernon charter. I didn't read it. It was merely to form an intersectional connection, and that was the object of this meeting, and that was what was done, if I knew how to draft what was necessary.

Mr. MCCLERNARD. The connection was one of that character?

Date of meeting in '55, before the vote in Wayne Co.

A. My impression has always been that it was in 1855, before the vote in Wayne County. I have always been under the impression that it was preparatory to the vote taken in reference to the donation of swamp lands. I would state farther that a meeting of the same two companies and of the Mount Carmel Railroad took place in the year '56, at Mount Vernon, with a view to a further consolidation, and with a view of Pickering's interest. I was present at that meeting and assisted. The object then was to form a further connection, getting Pickering's road in. That extended the road through. A connection was then formed. The

Second meeting in 1856. Pickering's interest.

difficulty in the arrangement was to satisfy Pickering's private interest in the property of that company.

Mr. McCLERNARD. That was the last meeting?

A. Yes; that was held in '56. I speak from the best of my memory and impressions, while I find others differing with me about the joining. The meeting in '56 was held in the same place.

Mr. BEECHER. The first meeting was held in '55, I believe?

A. It was in the spring, I think. I know it was about then. I am under that impression.

Cross-ex. Mr. KNAPP. Judge Scates, who was present at this meeting?

A. I recollect Mr. Goedeking being there. I was there myself.

Mr. BEECHER. Excuse me a moment; a list of '55 is here.

112 A. Harvey T. Pace was there. They were not all there. I recollect Mr. Goedeking. (Some further names were mentioned to which the witness responded "I don't recollect.") I think John M. Johnson was there. M. Casey was there. I have been under the impression that Mr. Bonham and Mr. Turney were there, although I am not sure. Mr. Coffin, also. As to Mr. Goedeking being there, Mr. Turney recollects that.

Mr. BEECHER. These parties you speak of as present were of the Mount Vernon Railroad Company?

Re-direct. A quorum present. A. Some of them.

Mr. HAY. I would call your attention to one thing. Was it your recollection that there was understood to be a quorum present of the Fairfield and Belleville Company?

A. I am under that impression; probably a representation of the full company. I knew I was acting rather in the way of legal adviser as well as a member of the Mount Vernon Company at the time. I wanted to do the thing properly so as to comply with the Mount Vernon R. R. law, and I am further convinced of the general impression being correct by the fact that I afterwards went over into Wayne County, at Fairfield, and made a speech to induce the people of Wayne Co. to vote the lands. I don't know but you (to Mr. Beecher) were present.

Witness made a speech in Wayne Co.

Mr. BEECHER. I recollect.

A. I think Governor Casey went over, and made a speech at the same time. We had a canvass. I know I made a speech before the election in your county, in favor of their donating the lands.

Mr. McCLERNARD. That's all.

Cross-examined:

Record of meeting of '55. Mr. KNAPP. Was the record of that meeting kept, Judge Scates?

A. I suppose so, and I supposed it was in the lost book; but I can't say I ever saw that book.

Belleville & Fairfield R. R. charter. Q. Did you ever have any knowledge of what was done by the Belleville & Fairfield R. R. Company?

A. I don't think they ever did anything.

Q. Did they ever organize?

A. I don't think they ever effected any further organization than the organization by the charter this meeting was under. Nothing done under it.

Q. Was anything ever done under that act that you know of?

A. I don't know; I am not aware of anything.

Q. Never took any stock in, that you know of?

A. I think not; I am under that impression.

Mr. McCLERNARD. You don't know anything about it?

A. I don't; wasn't a member of that company. I was interested to make use of the charter to get through Wayne County.

Mr. KNAPP. Don't you know long afterward—'58,–'9–'60—of any effort to go through Wayne County?

A. I can only answer that in this way. In '57 I settled in Chicago to practice law, and when I found Vanduzer,
113 Smith & Co. ready to take the contract, I went down there and was their draughtsman. Mr. Tanner was their counsel and the agent of the county, and the meeting was held at Joel Pace's. Mr. Tanner was employed to see that a proper contract was entered upon. I was there, and drew the contract as amanuensis. That was October, '58, and I don't know but a part of this original paper we have here is in my handwriting. Contract. Vanduser, Smith & Co. with R. R.

Mr. GOODWIN. The contract?

A. With Smith, Vanduser & Co. I was very seldom at Mount Vernon afterwards. I don't know what they understood.

Mr. GOODWIN. Did that include the contract with Wayne County?

A. No. It was afterwards we got that contract. That may have been the understanding then, but I was so little there I was not familiar with the details after that. I was only there a few times to draw a contract for them, and then went home again. Contract with Co. got afterwards.

Notice to take depositions.

Circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF THE COUNty of Wayne and the Mount Vernon Railroad Company. } Bill in chancery. Notice.

To Charles A. Beecher, esq., attorney for defendants:

Please to take notice that Angus M. Grant, T. B. Tanner, W. Duff Green, Harvey T. Pace, Joel Pace, Charles T. Pace, John C. Gray, Noah Johnston, Wm. Dodus, Joel F. Watson, Thomas Hobbs, and others, residents of Jefferson County, Illinois, are witnesses whose testimony is necessary in this cause, and who reside in said Jefferson County, Illinois, will be examined on the part of the complainants in this cause, before a notary public duly appointed by the governor of said State, for the county of Jefferson, in the southern district of Illinois, at Mount Vernon, the county-seat of Jefferson County, at his office, in said town

difficulty in the arrangement was to satisfy Pickering's private interest in the property of that company.

Mr. McCLERNARD. That was the last meeting?

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of Mount Vernon, in said southern district of Illinois, on the sixth day of September, A. D. 1869, at 10 o'clock in the forenoon, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated Fairfield, 23rd day of August, A. D. 1869.

Yours, etc.,

WALTER B. SCATES,
Attorney for Complainants.

Acceptance of notice.

I hereby accept and acknowledge service of a copy of the above notice, on behalf of defendants, at Fairfield, Wayne County, Illinois, this 23rd day of August, A. D. 1869.

C. A. BEECHER,
Attorney for Defendants.

114 *Certificate of notary.*

UNITED STATES,
Southern District of Illinois, ss:

Be it remembered that, on the sixth day of September, A. D. 1869, personally appeared Angus M. Grant, Harvey T. Pace, W. Duff Green, before me, John W. Baugh, a notary public appointed by the governor of the State of Illinois, in and for the county of Jefferson, in the southern district of Illinois, and duly authorized under the laws of the United States to take affidavits and acknowledgments, etc., testify, and in truth to say on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Illinois, wherein John W. Kennicott, Thomas Upham, Eleazer W. Stone, Joseph W. Ward, and Austin Myers are the complainants, and the Board of Supervisors of the county of Wayne and the Mount Vernon Railroad Company are the defendants, on a bill in chancery; and the said witnesses, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Deposition of Harvey T. Pace.

HARVEY T. PACE, being introduced and duly sworn, deposeth and testifieth as follows, to wit:

My age is 64 years. I have resided in Mount Vernon for forty years. My occupation is that of a merchant. I recollect that a meeting was held in Mount Vernon over Joel Pace's store, some time, I think, during the year 1856. I recollect that Downing Baugh acted as secretary of the meeting. I think the meeting took place in the spring of the year. I recollect that John M. Johnson, Thomas M. Casey, Zadok Casey, and myself were present, and I think that Judge Scates was also there; also Dr. Green. The object of the meeting, I think, was to consolidate the stock of the Mt. Vernon Railroad Company and the Belleville and Fairfield Railroad Company. There was a transfer of stock, I think, on that occasion, but I don't recollect which company it was that made the transfer, or to which company the stock was transferred. The Mt. Vernon Railroad Company, however, transacted business, and I think the

Belleville and Fairfield Railroad Company was not much known after that time. I remember now that at the meeting above referred to John M. Johnson could not have been present if it was held in 1856, because I know that he died in the year 1855, hence I must be mistaken about the year that the meeting took place, or about John M. Johnson being present. I think that the meeting was held in 1855 or 1856, but can't state which. At the meeting above referred to, my impression now is that there was a consolidation of the two companies, but I am not certain about the fact.

(The whole of this testimony, except the preliminary statements, objected to by C. A. Beecher, esq., att'y for def't.)

H. T. PACE.

Subscribed and sworn to before me this 7th day of September, A. D. 1869.

J. W. BAUGH,
Notary Public.

115 *Deposition of W. Duff Green.*

W. DUFF GREEN, being introduced and duly sworn, deposeth as follows, to wit:

My age is 48 years; have lived in this place about 23 years. I can't state with any certainty, but I have an impression that there was at some time a consolidation made of the Mount Vernon Railroad Company and the Belleville and Fairfield Railroad Company. I don't think I was present at the time said consolidation was made, and have no personal knowledge of it.

(The testimony in reference to the consolidation above stated is objected to by C. A. Beecher, esq., att'y for def'ts.)

W. DUFF GREEN.

Subscribed and sworn this 7th day of September, A. D. 1869.

J. W. BAUGH, *Notary Public.*

Certificate of J. W. Baugh, Notary Public.

STATE OF ILLINOIS, *Jefferson County, ss:*

I, John W. Baugh, a notary public in and for the said county and State aforesaid, do hereby certify that the reasons for taking the foregoing depositions and the fact is that the witnesses are residents of the county of Jefferson and State aforesaid.

I further certify that a notification of the time and place of taking said depositions was made out and is hereunto annexed.

I further certify that on the 6th and 7th days of September, A. D. 1869, I was attended by the Hon. Walter B. Scates, of counsel with the said complainants, and by Charles A. Beecher, esq., of counsel with the said defendants, and by the witnesses, who are of sound mind and lawful age, and the witnesses having been by me carefully examined and cautioned and sworn to testify the whole truth, the depositions were by me reduced to writing in the presence of the witnesses, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the

parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this 7th day of September, A. D. 1869.

{ J. W. BAUGH, NOTARY PUBLIC. L. S. }

J. W. BAUGH,
Notary Public.

(Indorsed:) Filed, and opened per stipulation on file, November 25th, 1869. J. A. Jones, clk.

Circuit court of the U. S., south. district of Illinois.

JOHN W. KENNICOTT, THOMAS UPHAM, EBENEZER W. STONE, JOSEPH W. WARD, AUSTIN MYERS,
vs.
THE MOUNT VERNON RAILROAD COMPANY and the Board of Supervisors for Wayne County.

DISTRICT OF MASSACHUSETTS, *City of Boston:*

Be it remembered that on this twentieth day of November,
116 in the year of our Lord one thousand eight hundred and sixty-nine, before me, the subscriber, a commissioner of the circuit court of the United States for the district of Massachusetts, duly appointed to take affidavits and bail in civil causes and for other purposes, came one of the plaintiffs in the above-entitled cause, and requested me to take the depositions of Norman A. Smith, Joseph W. Ward, witnesses for the plaintiffs in the above-entitled cause; and, it appearing to me on the oath of a sufficient witness that the above-named several witnesses resided at a greater distance than one hundred miles from the place of trial of the above-named cause, and that neither of the said adverse parties nor any attorney of either resided within one hundred miles of the place of taking said proposed depositions named in the caption hereof, I caused the said witnesses to come before me on the day and year aforesaid, at my office in the said city of Boston, and thereupon Norman A. Smith, a witness for the plaintiff, appearing, was by me carefully examined, cautioned, and sworn to testify the whole truth, and made answers to the interrogatories as hereinafter follows.

Deposition of Norman A. Smith.

Norman A. Smith's deposition.

Interrogatory 1st. What is your name, age, residence, and business?

He says: Norman A. Smith; age forty-five years; reside, Ware, Hampshire County, Massachusetts; am a railroad-contractor.

Inter'og. 2. Were you engaged in the construction of the M't Vernon Railroad in the State of Illinois, about the year 1858?

He says: I was, in company with other members of our firm of Smith, Van Duzen & Co.

Inter. 3. Whether or not you ever held any office in the corporation of the M't Vernon Railroad, and what?

He says: I was a director, and also the treasurer of the company from 1858 to the spring of 1860.

Int. 4. What do you know about the getting up and issue of the bonds of that railroad company called their construction-bonds?

He says: I got up the form of said bonds, caused them to be pre-

pared and executed by the proper officers of the railroad company, signed each of them myself, as treasurer, and delivered them according to the vote of the corporation. The total amount of bonds issued was eight hundred thousand dollars.

Inter. 5. Whether or not any mortgage was made to secure these bonds, and by whom and when?

He says: There was a mortgage made by the county of Wayne on one hundred thousand acres of land to secure this issue of eight hundred thousand dollars of bonds. The judges of the county executed this mortgage-deed. It was all done in open court, and I was present. The only one of said judges whom I now remember was Judge Wilson. I recollect his being present. He then, and for a long time after, was agent and counsel for the county in all matters pertaining to said bonds and the business of the road. I saw at this time a written authority in his possession, signed by his associates on the bench, authorizing him to act for them on said subject. I read this authority at that time, and have seen it more than twenty times.

Inter. 6. To whom was this mortgage executed?

He says: To Isaac Seymore, of New York City, trustee for the security of the bonds.

117 Inter. 7. Were these bonds deposited with Isaac Seymore, trustee, and for what purpose?

He says: They were, for the purpose of his signature; after signing them he returned one-half of them to me, as treasurer of the company, and the other half he retained as custodian for the county of Wayne, subject to the order of the county judges.

Inter'og. 8. What was done with the bonds received?

He says: A large portion of them was used as collateral security for contracts for furnishing labour and materials for building the road. The company gave this collateral security to perform their own obligations.

Inter'og. 9. What disposition was made by Wayne County of their half of the bonds?

He says: They were withdrawn from the trustee by their duly authorized agent, Judge Wilson, to negotiate them for the use of the road.

Inter. 10. Was there a consolidation between the Mount Vernon Railroad Company and the Belleville and Fairfield Railroad Company, by which a connection was made of their roads?

He says: There was. When our firm were making our contract at the court-house for the building of the Mount Vernon Railroad, it was represented to us by the county authorities then present that the commissioners had effected said consolidation.

Int. 11. Was there a vote of Wayne County to make a donation to the corporation of said lands?

He says: There was.

Int. 12. Did you or not see the book in which was recorded the acts of consolidation of the two corporations named in the tenth interrogatory?

He says: I did. I first saw it in the possession of the railroad company.

Int. 13. When and where did you last see said book?

He says: In possession of said company at Mount Vernon, Illinois, in the spring of 1858.

Int. 14. When did you resign as treasurer and director, and who was your successor?

He says: About June, 1860. Charles W. Lewis was my successor.

I transferred to him all the books, papers, and vouchers of the company in my possession.

Int. 15. By whose orders were the treasurer's papers, &c., delivered to Charles W. Lewis?

He says: By order of Judge Wilson, as director of the company and agent of the county of Wayne.

Int. 16. Whether or not the county of Wayne was connected with the Mount Vernon Railroad Company of Illinois in the construction of said road and the using of said securities for the construction of said road?

He says: They were; and transacted all their business thro' their agent, Judge Wilson, who acted under written authority, as above stated.

NORMAN A. SMITH.

Deed of trust of Wayne Co. to Wood.

County court, Wayne County, to Charles Wood.

This indenture, made and entered into this 13th day of March,
118 in the year of our Lord one thousand eight hundred and fifty-six, by and between Daniel Turney, judge of the county court of Wayne County, Illinois, William Ellis and Samuel Hooper, associate judge' of said county court, of the first part, and Charles Wood, of said Wayne County, of the second part, witnesseth:

That whereas the Congress of the United States of America, on the twenty-eig'th day of September, in the year of our Lord one thousand eight hundred and fifty, passed an act entitled "An act to enable the State of Arkansas and other States to redeem the swamp lands within their limits," wherein was granted and donated to the State of Illinois all the unsold swamp and overflowed lands within the limits of said State;

And whereas the legislature of the State of Illinois, on the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, passed an act entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same;" wherein was granted and donated to each of the several counties of the State of Illinois all the said swamp and overflowed lands lying, situated, and being within the limits and boundaries of each of said counties, severally and respect*fully*;

And whereas the legislature of the State of Illinois, on the 15th day February, in the year of our Lord one thousand eight hundred and fifty-five, passed an act entitled "An act to incorporate the Mount Vernon Railroad Company," wherein, amongst other things, it was provided in the third section that when an amount equal to one thousand dollars per mile of the route of said road is subscribed the subscribers may meet at Mount Vernon and elect seven directors; and whereas, there having been upwards of one thousand dollars per mile of said road subscribed, the stockholders met at Mount Vernon, on the thirteenth day of November, 1855, and elected Walter B. Scales, John R. Allen, Downey Baugh, Newton R. Corey, John N. Johnson, Timothy Condit, & Hezekiah B. Newby directors of said company: and whereas afterwards, to wit, on the 14th day of November, 1855, at a meeting of said directors, Walter B. Scales was elected president, Downing Baugh secretary, and John R. Allen treasurer of said company; and whereas, by said act of incorporation, the county court of Jefferson County were authorized and empowered to subscribe for such amount of the capital

stock of said company as they may see proper; they may issue bonds of the county, and provide for the payment of principal and interest thereof, by sale or mortgage, one or both, of the swamp and overflowed lands of said county; or they may make such other disposition of said swamp and overflowed lands in aid of the construction and maintainance of such railroad as they may deem for the public interest of said county; the county com'r may, at any regular or special term of said court, order a special election to be held for the purpose of taking the sense of the qualified voters of the county thereupon, giving such notice thereof as they may deem proper, and which shall be conducted, returns made, canvassed, and published in all other respects as other county elections; the county court shall prepare a proposition or propositions of the mode or modes, one or more, containing a brief, clear, and distinct idea of the plan or plans proposed by them for aiding in constructing said railroad, which said propositions shall be printed at large on an election-ticket, and the voters may express their will on said proposition by voting "Yea" and "Nay" on said ticket; and whereas said county court, at the term, 1855, ordered an election to be held on the Tuesday after the first Monday in November, 1855;

119 And whereas, at a special term of said Jefferson County court, held at Mount Vernon, on the 17th day of August, 1855, it was ordered that the following proposition, for the disposal of the swamp and overflowed lands, and the proceeds of them sold *is* pre-empted in aid of the Mount Vernon Railroad, be submitted at the election *ticket* under the provision of the charter of said Mount Vernon Railroad Company, at the election on that subject, on the Tuesday after the first Monday in November next, that a donation be made by the county of all the swamp *land* overflowed lands of Jefferson County not sold or pre-empted, and the net proceeds of such as has been or may be sold under pre-emption rights or entered by mistake, to the Mount Vernon Railroad Company, upon condition that the company build and complete a railroad from Mount Vernon to Illinois Central Railroad, or its Chicago branch, one or both, and have the same in operation within three years from said election, and keep the same in operation; and whereas afterwards, to wit, on the Tuesday after the first Monday in November then next ensuing, at said election, there w*as* nine hundred and ninety-six votes cast for said proposition and two hundred and thirty against it, as appears by the canvasser's certificate of said election now on file in the office of the clerk of the county court of Jefferson County, Illinois;

And whereas, in the 10th section of the aforesaid Mount Vernon Railroad charter, it is further provided, that any county through which said railroad may run, and any county through which any other railroad may run to which this railroad may be joined, connected, or intersected, *may* are hereby authorized and empowered to aid in the construction of the same, or of such other railroad with which it may so connect, and for this purpose the provision of the 7th, 8th, and 9th sections of this act extend, include, and be applicable to every such county and to every such railroad; and whereas the legislature of the State of Illinois, on the day of February, A. D. 1855, passed an act entitled "An act to incorporate the Belleville and Fairfield Railroad Company," wherein is authorized the construction of a railroad from Belleville, in St. Clair County, in Illinois, and to run from thence through Nashville, in Washington County, and through Mount Vernon, in Jefferson County, and to Fairfield, in Wayne County, Illinois, and in said the following persons are appointed the board of

directors, viz, Henry Godkin, James L. D. D. Morrison, William Kenny, John Moss, Russell Hackley, Alexander D. Keneday, C. C. Coffer, J. M. Lucas, John M. Johnson, Thomas M. Casey, H. T. Pace, Edward Bonham, Daniel Turney, John Keen, and John Moore, who shall hold their office untill their successors are elected and qualified; and whereas all of said persons have signified their willingness to act and perform all the duties appertaining to said office of directors of said company, and the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, a meeting of said directors was held at Nashville, in Washington County, Illinois, when Harvey T. Pace was elected president, John N. Johnson treasurer, and Joel Watson secretary of said Belleville and Fairfield Railroad Company;

And whereas the line of the Belleville and Fairfield Railroad will join to and connect and intersect with the aforesaid Mount Vernon Railroad, at some convenient point at or near Mount Vernon, and thereby the said Belleville and Fairfield Railroad will become a part of, and elongation and extension of, said Mount Vernon Railroad, and thereby fully and legally authorized and empowering the counties of St.
120 Clair, Washington, and Wayne, (through which said Belleville and Fairfield Railroad is situated,) to use, exercise, and enjoy all the powers, rights, and privileges of appropriating and donating all the swamp and overflowed lands respectively belonging to said counties, for the purpose of aiding in the construction of the said Belleville and Fairfield Railroad, or any other line of railroad which may pass through any of said counties, and be joined to and connected, or intersected with the said Mount Vernon Railroad, or which may be joined or connected and intersected with the said Belleville and Fairfield Railroad, because of, and by reason of, the said Mount Vernon Railroad being joined to connect' and intersect' with the said Belleville and Fairfield Railroad, at or near Mount Vernon as aforesaid;

And whereas, under the authority and by virtue of the provisions contained in the said tenth section of the aforesaid act to incorporate the Mount Vernon Railroad, the county court of Wayne County, in said State of Illinois, for the purpose of aiding in the construction of the said Belleville and Fairfield Railroad, and of the Alton, Mount Carmel and New Albany Railroad, held a special term of said court on the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, and then these passed an order that, on Tuesday after the first Monday in November, 1855, an election should be held by the legal voters of Wayne County, for the purpose of voting for or against donating the unsold swamp and overflowed lands of that county to any company that would build and complete, in a reasonable time, a railroad through and across the limits of said county, from the east to the west side thereof, that is to say, from the town of Fairfield to the west line of said county, on the route of the Belleville and Fairfield Railroad, and from Fairfield to the east line of said county, along the route of the Alton, M't Carmel and New Albany Railroad Line, as heretofore located and partly graded by the State of Illinois—and after due notice of said election had been given by the said county court of Wayne County, to the legal voters of said county, on Tuesday, after the first Monday in November, 1855, an election was held throughout the said county of Wayne, "for" and "against" the donation of all the unsold swamp and overflowed land belonging to said county, to be given and granted as a bounty and premium to any company that will construct and finish a railroad across said county as aforesaid, when, at the said election, there were eight hundred and thirty-one

votes (831) given in favor of and for said donation, and there were two hundred and fifty-eight votes given against said donation, as appears by the canvassers' report, a certificate of said election now on file in the clerk's office of the county court of Wayne County aforesaid;

And whereas the Alton, M't Carmel and New Albany Railroad charter provides and authorises said railroad shall be made from Jeffersonville, in the State of Indiana, opposite the city of Louisville, in Kentucky, and shall run through New Albany and the southern portion of the State of Indiana to Mount Carmel, in the State of Illinois, and thence through Albion, in Edward's County, and through the aforesaid town of Fairfield, in Wayne County, Illinois—and that part of said railroad from Mount Carmel to Albion has heretofore been located and graded by the State of Illinois, and from Albion to Fairfield has heretofore been located and partly graded by said State—therefore, the Alton, Mount Carmel and New Albany line of railroad passing through the whole width of Edward's County, on its route from Mount Carmel to Fairfield, will thereat be joined to, and there connect and intersect with, the Belleville and Fairfield Railroad, and by said conjunction, connection, and intersection of the Belle-
121 ville and Fairfield Railroad with the Alton, Mount Carmel and New Albany Railroad at or near the town of Fairfield, it will constitute, conclude, and continue the elongation, junction, and extension of the Mount Vernon Railroad through and along the length of the Belleville and Fairfield Railroad, and thence from *from* Fairfield to and through and along the length of the Alton, Mount Carmel and New Albany Railroad, thereby creating and constituting an extension of the Mount Vernon Railroad all the way from the town of Mount Vernon to Jeffersonville, opposite the city of Louisville, Kentucky—and, by reason of and through the aforesaid junction, connection, and intersection of the Alton, Mount Carmel and New Albany Railroad with the Belleville & Fairfield Railroad, and through and along the line of the last-mentioned railroad to the town of Mount Vernon, thereby forming a complete junction, connection, and intersection with the said Mount Vernon Railroad, the county of Wayne becomes duly, legally, and rightfully authorized and empowered, by the provisions of the said Mount Vernon Railroad charter, to apply, appropriate, use, and donate all the unsold swamp and overflowed lands belonging to said county, for the use and purpose of aiding in the construction of Belleville and Fairfield Railroad, and of the Alton, Mount Carmel and New Albany Railroad, across the limits of said Wayne County;

And whereas, furthermore, the charter of the said Alton, Mount Carmel and New Albany Railroad Company to construct a branch of said railroad to Illinoistown, opposite the city of St. Louis, in Missouri, and long before the legislature of Illinois had passed the "Mount Carmel" and the Belleville and Fairfield Railroad charter, the board of directors of the Alton, Mount Carmel and New Albany Railroad Company had passed a resolution stating and fixing the location of the line of the said branch railroad to run from Fairfield, through the town of Mount Vernon, Nashville, and Belleville, to Illinoistown, opposite St. Louis, and for the reason, and by and through the means of the aforesaid prior location of the said branch railroad through the aforesaid towns along the very same line and routes, and previous to the passage of the charter of the Mount Vernon Railroad and of the Belleville and Fairfield Railroad, the most intimate and perfect junction, connection, and intersection will be effected, as well as the mutual elongation, extension, union, and consolidation of the Mount Vernon Railroad with the Belle-

ville and Fairfield Railroad, and also with the Alton, Mount Carmel and New Albany Railroad, will be secured and thoroughly united with each other, and thereby constituting one continuous air-line railroad from Jeffersonville, in Indiana, to Illinoistown, in Illinois, commonly designated the Louisville and St. Louis air-line railroad—and for all these reasons, and by virtue of the aforesaid junction, connection, and intersection, extension, consolidation, and union of the Mount Vernon Railroad with the Belleville and Fairfield Railroad, and also with the Alton, Mount Carmel and New Albany Railroad, as hereinbefore described and set forth, the aforesaid county of Wayne is tho'ughly entitled and lawfully authorized and empowered by and through the provisions of the said tenth section of the Mount Vernon Railroad charter to donate all the swamp and overflowed lands of and belonging to the said county of Wayne, for the purpose of aiding in the connection of the said Belleville and Fairfield Railroad and of the Alton, Mount Carmel and New Albany Railroad, running from *from* west to east through and across the whole width of said Wayne County;

And whereas, on the first day of December, in the year of our
122 Lord one thousand eight hundred and fifty-five, at a special term of the county court of Edwards County, Illinois, it was then and there ordered by said county court that an election should be held on the first day of January thereafter next ensuing, to wit, 1856, at the several precincts and places of voting in said Edwards County, calling upon the citizens of said county to vote "for" or "against" donating the unsold swamp and overflowed lands in this county to any company that will make and finish a railroad through and across the limits of said county of Edwards along the line of the Alton, Mount Carmel and New Albany Railroad, on the condition that the said railroad be finished in a reasonable time—and also that the title of said swamp-lands shall not be surrendered by this county until the said railroad shall be first made and finished, (from said donation are excepted all swamp-lands upon which pre-emption claims have been taken, and also sufficient of said lands to pay the expenses of surveying, &c.,) and it understood by the court that, if a majority of the votes cast at said election shall be given "for a railroad," that then all the unsold swamp lands in said county (except the reservation aforesaid) shall be given to any company that will make and complete the aforesaid railroad in a reasonable time;

And whereas public notice was fully and legally given of said election, and of the foregoing order and conditions thereof, at each and at all of the several precen'ts and places of voting, and by one hundred printed copies of the foregoing conditions and order of said county court being duly posted at the most prominently public places in said county, and thereafter said election was duly held throughout said county of Edwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-six, and at said election there were three hundred and sixty-eight votes cast and given "for" the aforesaid donation of the swamp-lands of Edwards County, and forty-five votes were cast and given "against" said donation, as appears by the certificate and report of the canvassers of said election, now on file in the clerk's office of the county court of said Edwards County, Illinois:

Therefore the county court of said county of Wayne, for the purpose of carrying into full effect the will of the people of the said county as expressed by them at their election, in favor of appropriating and using the whole of the unsold swamp and overflowed lands belonging to said county (except the reservation thereof hereinafter made and stated) by donating the same unto the Belleville and Fairfield Railroad Company

and to the Alton, Mount Carmel and New Albany Railroad Company, and to any other company who will make and finish said line of railroad across said county, as hereinafter described and fully set forth: therefore, in order to satisfy the justly-founded expectations of any company that may be found willing to expend their money in making said railroad across said county on the condition of their receiving the aforesaid grant and donation of said swamp and overflowed lands as their reward and recompense therefor, to aid them in the making and finishing said railroad, with the reservation and on the conditions aforesaid, as set forth in the aforesaid order of the county court, and published throughout said county along with the notices given for holding said election, and on which said election was founded, and for which reservation and conditions said votes were given at said election for said donation of said swamp and overflowed lands of said county of Wayne: Now, therefore, in consideration of the premises, the county court of Wayne County, Illinois, at a special term of said court, held in the court-house at Fairfield,
123 this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, pass and ordain an order of said court to make, execute, sign, seal, and deliver the following deed of trust, with the foregoing preamble hereunto annexed, and made a part of *of* said deed, explaining the conditions thereof and therein contained.

Therefore, this indenture, made this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, between Daniel Turney, judge of the county court of Wayne County, in the State of Illinois, and William Ellis and Samuel Hooper, associate justices of said county court, of the first part, and Charles Wood, trustee, of the second part, witnesseth:

That the party of the first part, in consideration of the premises above recited and hereunto annexed and exhibited on the foregoing twelve pages, and in pursuance of the authority vested in said court by the aforesaid act of the legislature of the State of Illinois entitled "An act to incorporate the Mount Vernon Railroad Company," approved February the fifteenth, in the year of our Lord one thousand eight hundred and fifty-five; and also, in pursuance of the authority so vested in said county court, by virtue of and in accordance with a vote given by the legal voters of said Wayne County, at an election held on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-five, as heretofore set forth; and for the further consideration of the sum of one dollar, of good and lawful money of the United States, to them in hand paid by the said Charles Wood, the party of the second part, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain and sell, unto the said Charles Wood, the party of the second part, all the unsold swamp and overflowed lands, be they more or less, belonging to the said county of Wayne, and lying and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to and the property of the said county of Wayne aforesaid, as exhibited by the hereinbefore-mentioned act of Congress of the United States of America, bearing date on the twenty-eight' day of September, in the year of our Lord one thousand eight hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp-lands within their limits," wherein was granted and donated to the State of Illinois all of the unsold swamp and overflowed lands within the limits of said State; and also, as exhibited by the act of the legislature of the State of Illi-

nois. passed and dated on the twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-two, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying," lying, being, and situate within the limits and boundaries of each of said counties severally and respectively, (hereby expressly excepting from said sale all swamp-lands upon which pre-emt*ing* claims have or may hereafter be taken, and also sufficient of said lands to indemnify the said county against all expenses attending the selling, surveying, and drainage, or in anywise accruing to said county on account of said land:)

To have and to hold all and singular the above granted and described premises, with the appurtenances thereunto belonging, to the said Charles Wood, and to his successors, until all the uses and trusts herein set forth and declared shall lawfully and completely be accomplished. And the said Charles Wood shall not, in any matter or thing, be liable or responsible other than he shall be accountable for
124 the exercise of reasonable diligence in the management of said trust:

Nevertheless, the foregoing conveyance is made for and upon the express trusts and conditions following, that is to say—

First. This conveyance is made to the said Charles Wood, as trustee, to hold the said lands for the purpose expressed in the recital in the fore part of this deed, and to manage and secure the same in the mean time, and until the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other company with which they may connect or unite for that purpose, shall build or cause to be built a railroad across the limits of said Wayne County, Illinois, from west to east.

Secondly. The said Charles Wood, as such trustee, shall have the care, oversight, and management of all said lands, and shall give diligent attention to preserve the same from all trespasses, damages, and wastes, and use all legitimate and necessary means for that purpose, and for the detection and punishment of and for the recovery of damages and compensation from them who may be guilty thereof.

Thirdly. The said Charles Wood, as such trustee for said lands, shall keep and render, at all times, when required by the county court, or the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, a full, fair, accurate account to said county board, and to said railroad company, of all mon*ies* received and paid by him for and concerning all wastes and damages done to said premises, or for or concerning his duties as said trustee.

Fourthly. The real estate, rights, interests, and equities herein conveyed to the said Charles Wood, as such trustee, are hereby expressly declared to be in trust, for the use and benefit of said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, for the purpose of aid' them to construct and put in operation a railroad across the whole width of the county of Wayne aforesaid. To the end, therefore, and to secure and assign to the said railroad companies, their succesSsors and assigns, the full benefit of the aforesaid donation of the said several tracts of swamp and overflowed lands of and belonging to the said Wayne County, according to the true effect and meaning of the people of said county, as expressed by their votes at said election, it is, therefore, in the—

Fifth place hereby declared, by and with the assent of the people of

Wayne County aforesaid, and of the county court of the said county, that, upon the completion of the said railroad across the county of Wayne as aforesaid, and immediately upon opening to the public for carrying freight and passengers across the whole width of said county, that the said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, shall be really, and be deemed to all intents and purposes to be, the sole and only beneficiaries and custuisque, to wit, of all the interests, rights, equities, and lands herein and hereby conveyed and assigned, and shall have the sole right to and control of the same, and the parties herein under this deed, and without hinderance or molestation of the county court or any other person or party, and said trustee is hereby authorised, directed, and required to do and act in all things thereafter as they may be directed or required in selling, conveying, or otherwise disposing of the same. Provided, always, and
125 it is expressly understood, that the said railroad shall be surveyed, located, and the work commenced in Wayne County, Illinois, on or before the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and shall be completed and put in operation on or before the first day December, A. D. one thousand eight hundred and fifty-nine, or else this conveyance, and all the trusts herein expressed, shall cease and become null and void, and in that case the said trustee shall reconvey the same to the county of Wayne, or such other or others as he may be directed by said court.

Sixthly. It is further stipulated, agreed, understood, and declared between the county court of said county of Wayne, and the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors and assigns, who are hereby recognized and declared to be the real parties in interest in this deed, that in case of the death, removal by the parties hereto, or by the resignation of the said Charles Wood as such trustee, his inability to act in or to carry into effect the trusts herein declared, and the true interest and meaning of the parties in interest, that said parties reserves the right to, and agree they will unite in nominating and appointing another to act as trustee in the place of the said Charles Wood, who shall thereupon be invested with all the legal and equitable powers, and be chargeable with all the liabilities and duties, as if named in the deed, to all intents and purposes whatsoever, and so from time to time as there may be any vacancy in said trusteeship. Said appointment shall be signed by the clerk of the county court, and the secretary or other proper officer of said company or their assigns, and be sealed with the proper seal of each party thereto.

Seventhly. The said county court of Wayne County aforesaid, and the Belleville and Fairfield Railroad Company, and the Alton, Mount Carmel and New Albany Railroad Company, their successors or assigns, hereby reserve the right and power to remove said trustee and appoint another as above provided, at any time they may deem it for their mutual interests so to do. And it is expressly understood and agreed by and between the parties to this deed of trust that, in the event that said railroad shall not be commenced and completed in manner and form as set forth in the above fifth clause of this deed, and the lands herein conveyed revert to the said county of Wayne, then, and in that case, there shall not be any cost, charge, or incumbrance whatsoever on said swamp and overflowed lands hereby conveyed by virtue of any services that may be done, had, or performed under this said deed of trust.

Eight'ly. The said Belleville and Fairfield Railroad Company and the Alton, Mount Carmel and New Albany Railroad Company, or their assigns, shall build, or cause to be built, a depot and station-house on said railroad within the present limits of the town of Fairfield, in said Wayne County; also, one station east and two stations west of said town, and within the limits of said Wayne County.

In testimony whereof the said county court of Wayne County aforesaid, parties of the first part hereto, have hereunto set their hands and private seals the day and year aforesaid.

N. B. The words "the Alton, M't Carmel and New Albany Railroad," on the 6th, 9th, and 10th pages, and the words "and to the Alton, Mount Carmel and New Albany Railroad Company," on pages 12th, 16, 17, & 18, and on page 18 the words "in Wayne County, Illinois," & on pages 19 and 20 the words "and the Alton, Mount Carmel and New
126 Albany Railroad Company," interlined before signing, and erasures made on page 14 before signing.

D. TURNEY, [SEAL.]
County Judge.
WILLIAM ELLIS, [SEAL.]
Associate.
SAMUEL HOOPER, [SEAL.]
Associate.

Attest: [SEAL.] JOHN TROUSDALE.
Clerk County Court, Wayne County, Illinois.

Filed 20th June, 1856.

J. G. BARKLEY,
Clk Cir. Court.

STATE OF ILLINOIS, *Wayne County, ss:*

I, John L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing deed of trust from the county court of Wayne County to Charles Wood, trustee, is a true and perfect copy as appears of record in my office.

Given under my hand and official seal at my office in Fairfield, this 20th day of December, A. D. 1869.

[SEAL.] JOHN L. HANDLEY, *Clerk.*

Charles Wood, trustee, to Wayne County.

Know all men by these presents that I, Charles Wood, trustee, to whom the swamp and overflowed lands of Wayne County, Illinois, have been conveyed in trust for the use of the Belleville and Fairfield Railroad Company, the Alton, Mount Carmel and New Albany Railroad Company, or any other railroad company with which they might connect for that purpose, that should build or cause to be built a railroad across the county of Wayne *County*, from west to east, said lands now conveyed to me in trust for said companies, by Daniel Turney, county judge, and William Elles & Samuel Hooper, esq's, associate justices of said county of Wayne, on the 13th day of March, A. D. 1856, by a deed of trust, which will be found recorded in record-book, pages 104 & 418, inclusive, conveying said lands as aforesaid on certain conditions expressed and set forth in said deed, and describing said lands as follows, to wit: All the unsold swamp and overflowed lands, be they more or less, belonging to the said county of Wayne, and lying and being

and situate within the limits of the said county of Wayne, in the State of Illinois, and belonging to, and the property of, the said county of Wayne aforesaid, as exhibited by the hereinbefore mentioned act of Congress of the United States of America, bearing date the twenty-eight' day of December, in the year of our Lord one thousand eight hundred and fifty.

Now I, Charles Wood, trustee, as aforesaid, in consideration that said railroad companies have failed to comply with the conditions of said deed, as set forth therein, and in pursuance of the requirements to recover said lands contained in the fifth clause of said deed of trust, and in obedience to an order of the county court, passed on the 20th day of August, 1857, in which I am ordered to reconvey said lands to the county of Wayne, I do hereby reconvey, remise, release, and forever quit-claim unto Dan'l Turney, judge, and W'm Elles, & Sam'l Hooper,
127 esq., associate justices of the county court of said county of Wayne, for the use of the people of said county, all my right, title, interest, and claim in and to said lands: To have and to hold the same with all the privileges and appurtinances thereunto belonging to the said Dan'l Turney, W'm Ellis, and Sam'l Hooper, and their successors in office for the use of the people of Wayne County as aforesaid, forever, so that neither I, the said Charles Wood, or my heirs, or any other person claiming from or under me or them, or in the name, right, or stead of me or them, shall, by any way or means, have claim, or demand any right, title, or interest in and to the aforesaid swamp or overflowed lands or their appurtinances, or to any part or parcel thereof forever.

In witness whereof I, the said Charles Wood, trustee as aforesaid, have hereunto set my hand and seal this 22nd day of August, A. D. 1857.

CHA'S WOOD, *Trustee.* [SEAL.]

STATE OF ILLINOIS, *Wayne County:*

Be it remembered that, on this 22rd day of August, A. D. 1857, personally appeared before me the undersigned clerk of the county court in and for said county, Charles Wood, trustee, &c., to me known to be the real person whose genuine signature appears to the foregoing conveyance, and acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal of said court, at Fairfield, the day and year above written.

[·] JNO. TROUSDALE, *County Clerk.*

Filed 26 August, 1857.

R. B. SLOCUMB, *Clk.*

STATE OF ILLINOIS, *Wayne County:*

I, Jno. L. Handley, clerk of the circuit court in and for said county and State, do hereby certify the above and foregoing to be a true and perfect copy of a deed given by Charles Wood, trustee, to Wayne County, as appears of record in my office.

Given under my hand and official seal this 15th day of December, A. D. 1869.

[L. S.] JNO. L. HANDDLY, *Clk.*

Plaintiff's side again. Goodwin, S. A.

Plaintiff's side again.

STEPHEN A. GOODWIN sworn.

This contract, dated January 26, 1860, which has been excepted to, between Jameson, Newcomb, and Elliott, and the Mount Vernon Railroad Company, is witnessed by Thomas T. Davis. He resides in Syracuse, New York. I know his writing, and this attestation is in the writing of Thomas T. Davis. The body of the contract is also in his handwriting, showing that he drew it.

Signature of Tho's L. Davis.

The court then adjourned to ten o'clock next day.

Third day, 10 a.m.

THIRD DAY.

NOV. 9TH, 1870—*ten o'clock a. m.*

Mr. GOODWIN. If the court please, we wish to show
128 that Wayne County, at the time of the execution of this deed of trust, had not adopted a permanent organization.

Wayne Co. under old co. court organization, when deed was made.

The COURT. It is admitted that, at the date of the mortgage and deed of trust, the county was acting under the old county court organization.

Articles of consolid. filed.

The reporter here produced his copy of the articles of consolidation between the New Albany and Mount Carmel, and Belleville & Fairfield Railroad, which was given to the clerk to be filed.

The case then went to argument.

Agreement between U. Jameson & Mt. Vernon R. R. Co.

Agreement made at Albany, in the State of New York, January 26th, A. D. 1860, between Uriah Jameson, Mansfield, Ohio, David Newcomb, of Albany, in the State of New York, and James G. Elliott, of the city of New York, of the first part, and the Mount Vernon Railroad Company, of the State of Illinois, a corporation duly chartered and organized under the laws of the State, of the second part, witnesseth: That the parties of the first, in consideration of one dollar to them in hand paid by the parties of the second part, hereby agree to sell and deliver to the parties of the second part in the city of Wheeling, Virginia, and at a convenient point on the Ohio River, for shipment, four thousand eight hundred tons American manufactured railroad iron of good quality, well rolled, of the weight of forty-five pounds to the yard, and as nearby as may be of the Erie pattern, in the amounts and at the times following, viz:

Five	hundred tun	March	1st, 1860.
Five	hundred tuns	April	1st, 1860.
Five	" "	May	1st, 1060
Eight	" "	Oct.	1st, 1860.
Eight	" "	Nov.	1st, 1860.
Seven	" "	December	1st, 1860.
Ten	" "	January	1st, 1861.

each tun to be gross weight, 2,240 pounds, the said bars to be well made, and not to be less than twenty-one feet.

The foregoing agreement is made upon this express condition, that the said Mount Vernon Railroad Company shall pay for the same and for each several parcel, as follows, on delivery: The price per tun shall be fifty-eight dollars, and when the first five hundred tuns shall be ready for delivery on the first day of March, 1860, the said parties of

the second part shall pay to the parties of the first part one quarter of the purchase-money, in cash or currency, bankable at Wheeling or its vicinity, and the residue in the bills of the Whitfield Bank, at Dalton, Georgia, making up the sum of fifty-eight dollars per ton, as aforesaid. The said parties of the second part also agree that they will, as a security for the redemption of said bills of said bank of Whitfield, deposit with the Merchant's Bank of Wheeling, or some other bank to be agreed upon by the parties as a special deposit, the first-mortgage bonds of The Mount Vernon Railroad Company, called construction bonds, for which Isaac Seymour, of New York, is trustee, at fifty cents to the dollar, to the amount of three-fourths of the purchase-money of the first five hundred tons of iron.

The currency of said bank shall be duly and properly marked to identify the bills, and the parties of the first part agree to redeem or
129 protect the same during the period of six months from the date of the receipt thereof, at an agency of said bank in Cincinnati, if one shall be established there, by currency bankable at Cincinnati, and at the rate at which the bills of said bank shall be quoted at Cincinnati, and shall, at all times, keep such currency from being dishonored at such agency during said term of six months. Whatever currency of that received on said first delivery of iron and marked as aforesaid shall be on hand in the possession of the said parties of the first part at the expiration of said term of six months shall be redeemed by the said parties of the second part (said railroad company) by the payment of other bankable money, and the said railroad company shall be entitled to redeem and take up the said mortgage bonds deposited as aforesaid for the security of the first delivery of iron above mentioned.

And it is agreed and understood that each of the said several lots of iron, the delivery of which is above provided, shall be paid for in the same manner and that all the stipulations in reference to the first parcel of 500 ton of iron shall apply to each and every other parcel above stated, dating the times for the delivery respectively thereof. The currency of the Bank of Whitfield on each lot of iron shall be distinctly marked, so that the same can be identified, and it is understood that if other currency issued by said bank shall be marked in the same manner as that which is to be redeemed or protected by the parties of the first part, they, the parties of the first part, shall be no longer bound to redeem or protect such issue. The parties agree to purchase and do hereby purchase the said quantity of iron and to pay for the same as is provided.

It is further agreed between the parties hereto that the parties of the first part shall cause the said rails to be punched for spikes of the chairs as the parties of this second part shall direct, and the parties of the second part shall pay for the same at the rate of fifty cents p'r ton, cash on delivery.

In witness whereof the said parties of the first part have severally signed and executed this agreement, and the said parties of the second part have caused the same to be executed in their behalf and in their name by the executive committee duly authorized thereto, and attested by their treasurer the day and year first above written.

(Signed) U. JAMESON,
DAVID NEWCOMB,
J. G. ELLIOTT,
AUSTIN MYERS,
L. D. CRIPPIN,
Ex. Committee.

Mount Vernon R. R. Company.

Appointment of J. P. Harley, trustee.

This instrument of writing witnesseth: That we, N. A. Smith, Ira Hersey, L. D. Crippin, S. B. Kendrick, I. T. Vanduzer, the subscribers hereto, have created and do hereby create this special trust, and have appointed and hereby do appoint J. P. Harley, esq., trustee of the said trust, and have delivered to him as trustee and as belonging to the said trust, eighty hundred shares of the capital stock of the Mount Vernon Railroad Company, to wit: N. A. Smith delivered certificates for twenty hundred shares, Ira Hersey delivered certificates for twenty hundred shares, L. D. Crippin delivered certificates for ten hundred shares,
130 S. B. Kendrick delivered certificates for ten hundred shares, I. T. Van Duzer delivered certificates for twenty hundred shares.

And the said trustee is hereby duly authorized and directed to hold the said certificates of shares of stock subject to and only to the demand or order of Ira Hersey or his assign or assigns, and to deliver the said certificates of shares only to the demand or order of the said Ira Hersey or his assign or assigns, and only on compliance with the following express conditions, to wit:

To deliver on the demand, in quantities as demanded, any part of ten hundred shares to the said Ira Hersey or his assign or assigns, or to his or their order, at any time on or before the first day of April next, on receiving in payment therefor twenty-five (25) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of May next, any part of ten hundred shares on receiving in payment therefor thirty (30) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of June next, any part of ten hundred shares on receiving in payment therefor thirty-five ($35) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on before the first day of July next, any part of ten hundred shares on receiving in payment therefor forty ($40) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of August next, any part of ten hundred shares on receiving in payment therefor forty-five ($45) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of September next, any part of ten hundred shares on receiving in payment therefor fifty ($50) for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of October next, any part of five hundred shares on receiving in payment therefor fifty-five ($55) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of November next, any part of five hundred shares on receiving therefor sixty ($60) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of December next, any part of five hundred shares on receiving in payment therefor sixty-five ($65) dollars for each share delivered.

Also, to deliver on the like demand and in the like manner to the said party or parties or order, at any time on or before the first day of January, 1861, any part of five hundred shares on receiving in payment therefor seventy ($70) dollars for each share delivered.

And it is a further special condition of this trust that, on the first day of April next, or before, if sold, and on the first day of each subsequent month, the said J. P. Harley, trustee, shall pay one-half of the sum of money so received in payme't of said shares of stock to the said parties, subscribers hereto, that is, to each respective subscriber, his heirs, executors, or assigns, a pro rata proportion of the said sum of money, on his proportionate contribution of shares to this trust;
131 and in like manner to pay to the same parties, after sixty days, the other half of monies so received and not paid under the next provision hereof.

And it is a further condition of this trust that the said J. P. Harley, trustee, is empowered and hereby specially directed to hold, for the term of sixty days after the sale thereof, one-half of the proceeds or sum of money received in payment of said shares of stock, subject at all times to payment to the said Ira Hersey or his assign or assigns, or his or their order, on demand, on receiving into the trust a proportionate number of shares for the sum of money demanded and paid, at the rate received for such stock or shares delivered from the trust, and the said trustee shall, at all times, hold the said shares so received into the trust subject to the demand of said Ira Hersey, his assign or assigns, or his or their order, on the repayment of the money to the trust fund; and it shall be the duty of the trustee, at any and all times, in like manner to receive and deliver shares of stock and pay and receive money for account of this trust. He shall also open a bank account as trustee, to which account he shall deposit all monies received and check for all monies paid.

And on the first of January, 1861, the said trustee shall pay and deliver to the parties, subscribers hereto, their heirs, executors, or assigns, that is, to each respective subscriber, his heirs, executors, or assigns, a pro rata proportion of the balance then remaining in the said trust on his proportionate contribution of shares to this trust, and thus and then close and terminate the trust.

And it is a further special condition of the trust hereby created that it is irrevocable, and binding on each and every subscriber hereto and on the trustees hereof, for the specified term of its existence, and till closed as above directed.

And it is a further special condition of this trust that the said J. P. Harley, trustee, has, and hereby does, by his written acceptance on the face of this "instrument of writing" of the trust hereby created, agree, obligate, and bind himself, his heirs, executors, and assigns, to each of the respective subscribers hereto, his heirs, executors, and assigns, and also in like manner to and with the said Ira Hersey, his heirs or assigns, to a strict and faithful compliance with, and execution of, all the conditions imposed and hereinbefore fully set forth, agreeable to the true intent and meaning thereof.

And whereas we have executed two duplicates of this "instrument of writing:" number one for the subscribers; number two, the trustees; and number three for Hersey or his assigns; and J. P. Harley, trustee, is hereby directed to deliver and receive the said shares of stock to or of the said Hersey or his assigns, only on the presentation of and after endorsement of such delivery or receipt on the "instrument of writing," designated on the title-page as "number three."

In witness whereof we have each respectively hereunto signed our names and set our seals this the tenth day of December, A. D. one thousand eight hundred and fifty-nine.

N. A. SMITH. [SEAL.]
IRA HERSEY. [SEAL.]
L. D. CRIPPIN, [SEAL.]
N. A. S.
S. B. KINDRICK. [SEAL.]
I. T. VANDUZER, [SEAL.]
By attorney, N. A. S.

Witness:
EZRA BALDWIN.

132 *Acceptance of J. P. Harley.*

This certifies that I, J. P. Harley, the subscriber hereto, the party named as the trustee of the trust created in and by the within "instrument of writing," have accepted and do hereby accept the position of trustee of the said trust, and as such trustee have received the shares of stock therein named. Therefore, for and in consideration of the sum of one dollar, received from, and to me in hand paid by, each of the respective subscribers to said "writing," and also of one dollar received from, and to me in hand paid by, the said Ira Hersey, the receipt of which sums of money is hereby acknowledged, I have hereby obligated and bound, and hereby do obligate and bind, myself, my heirs, executors, and assigns, to each one of the parties subscribers to said "writing," his heirs, executors, and assigns, and also to the said Ira Hersey, his heirs, executors, and assigns, to a strict compliance and execution of all the conditions imposed upon the trustee, as set forth in the "instrument of writing" creating said trust, agreeable to the true intent and meaning thereof.

In witness I have hereunto set my hand and seal this the tenth day of December, A. D. one thousand eight hundred and fifty-nine.

JOHN P. HARLEY. [SEAL.]

Witness:
EZRA BALDWIN.

Agreement between Mt. Vernon R. R. Co. & I. T. Vanduzer.

This agreement, made and concluded this tenth day of October, in the year one thousand eight hundred and fifty-nine, by and between the Mt. Vernon Railroad Company, a corporation of the State of Illinois, party of the first part, and I. T. Vanduzer, contractor, of Mount Vernon, Illinois, & E. Gulick and Hager, of New York City, contractor, parties of the second part, witnesseth:

That the said parties of the second part agree, and by these presents do agree, with the said party of the first part, for the considerations hereinafter mentioned and contained, for one dollar lawful money of the United States to them in hand paid, the receipt whereof is hereby acknowledged, to finish and complete the grading, culverts, bridges, ties, side-tracks, turn-outs, cattle-g'ards, and all necessary ditching, grubbing, and clearing on that portion of the road of said company, commencing at Ashley, Washington County, Illinois, to Fairfield, Wayne County, Illinois, distance forty-six and one-half miles, making the whole ready for the iron in nine months from the date and ensealing of this instrument, according to the following specifications:

Engineering.—The work is and shall be under the control and supervision of the chief engineer of the company, who shall make and render all estimates between the parties, and render all decisions, which shall be final between both parties.

The chief engineer and his assistants shall be hired at reasonable salaries, and the same be paid by the parties of the second part.

Location.—The work is to be on the located line of the company as it now exists, subject to changes by the chief engineer, with the concurrence of the board of directors.

Changes.—If, in the discretion of the chief engineer and the board of direction, the location, or working survey of the line, is changed or altered so as to increase any portion of the work, such increase
133 shall be estimated by the engineer aforesaid and allowed to the contractors in addition to the contracting price stipulated in this agreement.

Clearing and grubbing.—The width of the ground to be cleared of standing trees and brush shall be at least eighty feet, and in cases where the engineer considers a greater width necessary it shall be done.

From the surface of the grounds to be occupied by embankments, all trees, bushes, logs, and other perishable materials shall be removed or burned, and where the natural surface of the ground is less than two feet below the grade line, stumps and roots are to be grubbed up and removed, and where the natural surface of the ground is between two and six feet below the grade line, trees and stumps shall be cut off close to the ground.

Embankments.—The embankments will be made generally, unless ordered by the engineer, with a top width twelve feet, with side slopes; when of earth, of one and a half horizontally to one vertically, truly and evenly dressed. Side ditches shall be made when required by the engineer along the outer slopes of embankments, and the material obtained therefrom deposited in embankments or elsewhere as may be directed by him.

Besides the ditches and drains named above, ditches shall be made, when required by the engineer, leading to and from the works of drainage of the road; also, excavations for the making and turning of watercourses and of roads, all of which shall be done strictly according to the instructions of said engineer.

In cases where the excavations of ordinary width are insufficient to form the contiguous embankments, the deficiency shall be supplied by widening the cuts in such manner as the engineer may direct, or, at his discretion, the material shall be obtained from grounds adjacent to the line of the road.

The berm' between the foot of the embankments and the sides of the ditch to be not less than three feet.

Excavations.—The excavations of the roadway shall have generally a width of grade of not less than sixteen feet; but the width of the excavations as well as the inclinations of the slopes may be increased or diminished, at the discretion of the engineer, to suit the purposes of the construction or the nature of the material.

Timber foundations.—The beds shall be perfectly levelled & the timber of such dimensions as the plans will show, shall be well bedded at proper distances apart, and the intermediate spaces filled with such material as the engineer may select.

Culverts, drains, cattle-guards, passes, shall have the beds dressed to a fair bearing surface, the joints neatly fitted, & the whole thoroughly banded.

Trestle-work, which includes all wooden constructions which may be used as substitutes for embankments or for the abutments and piers of bridges, cattle-guards, sluice-drains, and road-bridges, shall be of the kind and quality that the company have used and erected on the portion of the road from Mt. Vernon to Ashley, and according to the plans and directions which the engineer may give. Timber for the above may be taken from the lands of the company if found suitable, otherwise to be furnished by the parties of the second part.

Piling, if ordered by the engineer, is to be done by the parties of the second part in the following manner; they shall be properly banded and pointed for driving, and shall be driven in such places, in such manner, & to such depths as may be required by the engineer.
134 They shall be of straight timber, not less than ten inches diam-*i*ter at the small end.

All the timber of the trestle-work, piling, &c., must be of sound, durable quality; the bark must be removed and the work performed in a skillful and workmanlike manner.

Ties, not less than twenty-four hundred to the mile, and more if required by the engineer, shall be furnished, not less than six inches face, six inches thick, and eight feet long; joint ties are to be of not less than ten-inch face and in sufficient number for the whole contract. Ties for switches and turnouts to be of suitable length, breadth, and thickness, or as may be ordered by the engineer. They are to be distributed in equal quantities, every one hundred feet, and piled by the side of the road or track. They are to be of white oak, post-oak, bur-oak, or honey-locust.

Preperations of ground for turnouts and switches shall be done as the engineer may direct, and is not to exceed fourteen, or sufficient for seven depots.

The parties of the first part, in and for the above-mentioned considerations, agree to pay to the parties of the second part the sum of ninety-four thousand dollars in lawful money, and thirty-one of the construction-bonds of the company, of one thousand dollars each, payable in the following manner, to wit: the engineer shall, at the end of each month, make an estimate of the work performed by the parties of the second part, in ratios to the whole price paid by the party of the first part, for the performance of the contract, which amount shall be paid to the parties of the second part, less fifteen per cent., which amount shall be retained by the party of the first part until the completion of said contract by the parties of the second part, at which time the whole amount thus retained shall be paid over to the parties of the second part as the last instalment due on said contract.

The party of the first part further agrees that the parties of the second part may, at any time or place, take from the lands of the company all necessary timber for the bridges, culverts, cattle-guards, ties, and all other wood-work embraced in their contract.

Given under our hands and seal the day and year above written.

I. T. VANDUZER,
EDWIN GULICK,
ALBERT H. HAGER,
N. A. SMITH,
For the Mt. V. R. R. Co.

In presence of—
IRA HERSEY.
Witness as to Albert H. Hager' signature:
EDWIN GULICK.

Deposition of J. W. Ward.

And on this twenty-fifth day of November, 1859, came before me JOSEPH W. WARD, of Boston, witness for the plaintiff, who, being by me examined, cautioned, and duly sworn to testify the whole truth, did depose and says:

Joseph W. Ward's deposition.

Int. 1. What is your name, age, and residence?

He says: Joseph W. Ward; age, fifty-five; residence, Boston, Massachusetts.

135 Interrogator' 2. Are you a party in the above entitled suit?

He says: I am.

Interrogatory 3. Whether or not, at any time, you purchased any bonds of the Mount Vernon Railroad Company; if so, when, how many bonds, and whether or not there was any consideration paid by you for said bonds?

He says: I did. In or about *about* the year 1860, and before the commencement of this action, I purchased, in the regular course of business, a quantity of the bonds issued by the Mount Vernon Railroad Company as construction bonds. The whole amount of said bonds bought by me was thirty-eight thousand dollars. I bought them in market, and paid for them in cash a valuable consideration.

Int. 4. Have you or not, since, in any way, disposed of said bonds which you then bought?

He says: I have not. I have been the bona fide owner and holder of them ever since said purchase, and the said bonds are the same that are referred to in this action as being held, owned, and represented by me.

JOSEPH W. WARD.

Deposition of John H. Brown.

And on the same day and at the same place came JOHN H. BROWN, a witness for the plaintiff, before me, who, being by me examined, cautioned, and duly sworn to tell the whole truth, did depose and say:

John H. Brown's deposition.

Int. 1. What is your name, age, residence, and occupation?

He says: John H. Brown; age, forty-two; reside at Marblehead, Massachusetts; a negotiator by occupation.

Int. 2. Whether or not, at any time, you purchased the construction bonds of the Mt. Vernon Railroad Company; and if so, where, and how many, and what consideration did you pay?

He says: About the year 1860, and before the commencement of this action, I purchased, in Boston, a number of the construction bonds issued by the Mount Vernon Railway Company, amounting, at their par, to fifteen thousand dollars; the same were purchased in the regular course of business, and I paid a valuable consideration in cash for them.

Inter. 3. Have you or not held said bonds ever since, and are you a party in this cause?

He says: I have held said at all times ever since said purchase, and am now the owner of them. I have understood that I have been

made a party to this suit. I have employed counsel with that expectation to represent my interest in the above-entitled action.

JOHN H. BROWN.

And I further certify the depositions of the aforesaid witnesses, Smith, Ward, and Brown, were by me reduced to writing, in the presence of said several witnesses, respect*fully*, and were afterward read over to the said witnesses, respectively, and by them signed, in my presence; and I hereby return all my doings.

Witness my hand and seal the day and year last above-mentioned.

CHAS. LEVI WOODBURY,
Commissioner Circuit Court U. S., District of Massachusetts.

(Indorsed:) Opened and filed, per agreement on file. Dec. 7th, 1869. J. A. Jones, clk.

126 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, & State of New York, ss:

Be it remembered that, on the 4th & 8th days of December, respectively, in the year of our Lord one thousand eight hundred and sixty-nine, I, Edward F. Stilwell, a notary public in & for the State of New York, & duly commissioned and sworn, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish*ed* the judicial courts of the United States," passed September 24th, 1789, and also the act of Congress authorizing notaries public to take depositions, passed July 29th, 1854, did call and cause to be and personally appear before me at my office, at No. 170 Broadway, in the city of New York, in the southern district of New York, in the State aforesaid, Austin Myers and Morris J. Earl, to testify, and the truth to say, on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States, for the southern district of Illinois, at Springfield, Ill., wherein John W. Kennicott, Thomas Upham, Ebenezer W. Stone, Joseph W. Ward, and Austin Myers are plaintiffs, and the Mount Vernon Railroad Company and the Board of Supervisors of Wayne County are defendants.

And the said Austin Myers, being about the age of fifty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Austin Myers, and he did thereupon depose, testify, and say as follows, viz:

Deposition of Austin Myers.

AUSTIN MYERS, of said city of New York, being duly sworn, says that he resides in the city of New York; that, in or about the year 1860, he purchased a number of the construction bonds of the Mount Vernon Railroad Company, amounting, at par, to the sum of sixty-three thousand dollars; that the same were purchased and received in the regular course of his business; and that he, (EDWARD F. STILWELL, *notary public,*)

paid therefor at that time a valuable consideration, to wit, cash. Some time before said purchase, said bonds had been delivered to Norman A. Smith by Mr. Isaac Seymour, the trustee named in the mortgage given to secure said bonds on lands in Wayne County, Ill. I understood at the time, & believe, said bonds were delivered by said Seymour to said Smith by the special order or request of Judge Wilson, who was then the agent and counsel of Wayne County, with relation to said bonds, and the disposition thereof. Since the said purchase of said bonds, I have been and am now the owner thereof, and they are the same bonds referred to in the above-entitled action as being owned or represented by me.

AUSTIN MYERS.

Taken, sworn, & subscribed before me this 4th day of December, 1869.

EDWARD F. STILWELL,
Notary Public N. Y. City, & County, & State.

137 The further examination herein adjourned to December 8th inst., at 12 o'clock noon, at same place.
December 4th, 1869.

EDWARD F. STILWELL.
Notary Public.

Deposition of Morris J. Earle.

170 BROADWAY, N. Y. CITY,
December 8th, at 12 o'clock noon.

Examination of witnesses continued:

And the said MORRIS J. EARL, being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, & nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Morris J. Earl, & he did thereupon depose, testify, & say as follows, viz:

Morris J. Earl, being duly sworn, says that he resides at Passaic, New Jersey, and that he is of the age of fifty years & upwards; that, in or about the year 1860, he purchased a number of the construction bonds of the Mount Vernon Railroad Company, amounting, at par, to the sum of fifteen thousand dollars; that the same were purchased and received in the regular course of his business; that the said bonds were received in exchange for some fifty-six lots of ground, or upwards, in or near the city of Brooklyn, which were of very great value, and that part of the said bonds, amounting to about nine thousand (EDWARD F. STILWELL, *notary public*) & five hundred dollars, deponent now represents in this suit above entitled, and is the legal owner & holder thereof, and that the said bonds were received in entire good faith, and for a good and valuable consideration duly paid therefor; that Charles W. Lewis, the treasurer of said Mount Vernon Railroad Company, was engaged in the negotiation or exchange of said bonds for said property, as hereinbefore stated, with deponent.

MORRIS J. EARL.

Taken, sworn, & subscribed before me this 8th day of December, 1869.

EDWARD F. STILWELL,
Notary Public, N. Y. City, & County, & State.

The witness Ira Hearsey, named in the annexed affidavit, fail'd to appear for examination.

EDWARD F. STILWELL, *Notary Public.*

Certificate of Edward F. Stilwell.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

I, Edward F. Stilwell, a notary public in and for the State of New York, & duly commissioned & sworn, under & by virtue of the acts of Congress entitled "An act for the more convenient taking of (EDWARD F. STILWELL, *notary public*) affidavits & bail in civil causes depending in the courts of United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled
138 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material & necessary in the cause in the caption of the said deposition named, as proved to me by the affidavit of Austin Myers, hereto annexed; and that they and each of them reside at or near New York City, and more than one hundred miles distant from the place where the court at which the said cause will be tried is appointed by law to be held; & that, as appears by said affidavit, the defendant, The Board of Supervisors of Wayne County, & the defendant, The Mount Vernon Railroad Company, reside in or near said county, & that both said defendants are more than one hundred miles from the city of New York, where the said witnesses were examined, & that all the attorneys of said defendants reside either at Springfield or Fairfield, in the State of Illinois, & more than one hundred and fifty miles from New York City aforesaid, as proved to me by said affidavits. I further certify that, on the 4th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by Austin Myers, & on the 8th day of December, 1869, I was attended by Morris J. Earl, the witnesses, who were of sound mind & lawful age, & the said several witnesses were by me first carefully examined & cautioned & sworn to testify the truth, the whole truth, and nothing but the truth; and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements; and after carefully reading the same to the said witnesses they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the clerk of the United States circuit court for the southern district of Illinois, at Springfield, Illinois, the court for which the same were taken.

And I do further certify that I am not counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 17th day of December, in the year of our Lord one thousand eight hundred & sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] EDWARD F. STILWELL,
Notary Public for New York City, County, & State.

(Indorsed:) Filed and opened in accordance with stipulation on file Dec. 28th, 1869. J. A. Jones, clk.

UNITED STATES OF AMERICA,
Fifth Circuit and District of Louisiana :

Be it remembered that on the 29th day of June, in the year of our Lord 1870, I, D. Urban, an United States commissioner, duly appointed by the circuit court of the United States for the 5th circuit and district of Louisiana, to take affidavits and acknowledgements of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de bene esse, Charles Hodges, on behalf of complainants, in a certain suit depending in the circuit court of the United States in and for the southern district of Illinois, at the city of Springfield, in said district and State, wherein John W. Kennicott et al. are complainants, and the Board of Supervis-
139 ors of the County of Wayne et al. are defendants; and the said examination was taken by me de bene esse, because said witness Charles Hodges resided at New Orleans, in the State of Louisiana, more than one hundred miles from the city of Springfield as aforesaid, the place where the court in which said suit is pending and to be tried was appointed by law to be held; and no notification was given to the said defendants of the time and place appointed for taking the said deposition to be present at the taking of the same, and to put interrogatories if they saw fit, because the said defendants were not, nor did have any agent or attorney, within *an* one hundred miles from said place of caption on taking said deposition, to whom said notification could be given; and I therefore proceeded with said examination.

Deposition of Charles Hodges.

And the said CHARLES HODGES, witness as aforesaid, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says :

I am about forty-two years of age, and reside at Kenner, Jefferson Parish, Louisiana; my business is that of a planter. I know William R. Hodges; is doing business in New Orleans, as merchant in cotton, &c., which business frequently called him to different parts of the country and to Europe. On these occasions he has been in the habit for many years, before leaving on such journeys, of leaving such valuable papers as he may happen to have in his possession at the time in my hands for safe-keeping till his return, and, as his residence has generally been in the same house as mine during those years, such papers and securities have often been in my possession for a considerable period of time—on one or two occasions for over a year. On such occasions I have been in the habit of locking up such papers or securities in an ordinary tin box, and placing them in an armoir' or wardrobe in my bed-room. I have been in the habit of examining such papers & of knowing all particulars in regard to them, we frequently consulting together as to their value, &c., and have sometimes had a joint ownership in various securities so held. I have also held, and still hold, a full power of attorney from said W. R. Hodges to manage and conduct all his business affairs during his absence. I know that W. R. Hodges had certain "construction bonds of the Mount Vernon Railroad Company of Illinois." He has frequently placed them in my possession, as before described, for safe-keeping since the year 1860, and, on one occasion, viz, on or about the month of May, 1866, on his departure for Europe, he sold and transferred them to me for a valuable consideration, and I again resold & transferred them to him for a like consideration and interest on his return in 1869.

The numbers and denominations of the said bonds were as follows: Fifty-seven bonds of the denomination of $500.00 each, & were numbered, respectively, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 119, 126, 223, 233, 255, 244, 245, 246, 247, 235, 236, 237, 238, 239, 240, 241, 242, 249, 299, 350. That twenty-one of said bonds were of the denomination of $1,000.00 each, and were numbered, respectively, 328, 329, 330, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600, and that all of said bonds were of the same series, and of either the denomination of $500.00 or $1,000.00, bearing interest at the rate of seven p'r centum per annum, payable semi-annually of the first
140 of May & November in each year, the total number of said bonds being seventy-eight, and their total nominal value, exclusive of the interest-coupons attached, was $49,500.00. Each of said bonds had twenty-eight (28) coupons attached, beginning with number 3, which was dated 1st of May, 1860, and ending with No. 30, and dated 1st May, 1874; two coupons (Nos. 1 & 2) dated May 1st, 1859, November 1st, 1859, having been detached from each bond, and no more. On about the twenty-fifth day of January last (1870) the said W. R. Hodges, being about to make a journey to Texas, placed the whole of the before-mentioned bonds in my hands for safe-keeping during his absence. However, three of said bonds, of the denominations of $1,000.00, each one numbered, respectively, 228, 229, & 230; and also, one bond of the denomination of $500.00, numbered 299, which four bonds he did not hand to me with the rest. I placed the said bonds in an ordinary tin box, such as is used for keeping papers of value by bankers & others, said box being about eleven or twelve inches long & seven or eight inches wide, which box I locked and placed in an armoir' (or wardrobe) in my bed-room, at my residence, at Kenner, Jefferson Parish, Louisiana. Early on the morning of 17th March last past, (1870,) while the said bonds and coupons were so placed, and in my care, they were, together with the box in which they were placed, and the house, lately destroyed by an accidental fire. As soon after the fire as I could enter the ruins, viz, on the 17th or 18th of March, I made search there, and found the top, bottom, & sides of the same box in which the said bonds and coupons had been placed. Among the ruins that had been caused by the fire the parts of the box were seperated, and the said bonds and coupons were burned to tinder. During the progress of the fire I made an effort to save the said box containing the bonds and coupons, but in the confusion was unable to find the key of the a'moir' in which it was placed. I then attempted to break it open, but it was so strong I was unable to do so. I also tried to remove it from the room, several others assisting, but the fire had gained so much, and was so furious, that we were driven back. The house was a large plantation residence of nearly 100 feet square, the lower story built of brick, and the upper one of cypress timber, with a very large shingle roof, and it was built about the year 1814, everything being very dry, so that in about half an hour after the fire was discovered the roof fell in, and in about an hour and a half the whole house was in ruins; the house had a gallery entirely around it, and the only entrance to the upper story was by a flight of steps, front and rear, leading up from the garden. My room, where the said armoir contained the said bonds was placed, the entrance being comparatively

narrow, and the furniture large and heavy, it was impossible with the means at hand to rescue it from the flames.

CHS. HODGES.

Sworn to and subscribed before me this 29th June, 1870.

[L. S.] D. URBAN,
U. S. Commissioner.

And I do further certify that the preceding deposition was reduced to writing by the witness, Charles Hodges, in my presence and signed by the witness, Charles Hodges, in my presence, after due reading of the same; and that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

Witness my hand and official seal at New Orleans on the day and year first above written.

[L. S.] D. URBAN,
U. S. Commissioner.

141 (Indorsed:) Filed July 2nd, 1870. J. A. Jones, cl'k.

(Indorsed:) Opened at request of compl'ts' sol: J. A. Jones, cl'k.

UNITED STATES OF AMERICA,
Fifth Circuit and District of Louisiana:

Be it remembered that, on the 29th day of June, in the year of our Lord 1870, I, D. Urban, an United States commissioner, duly appointed by the circuit court of the United States for the fifth circuit and district of Louisiana, to take affidavits and acknowledgements of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de bene esse, William R. Hodges, on behalf of complainants, in a certain suit depending in the circuit court of the United States in and for the southern district of Illinois, at the city of Springfield, in said district and State, wherein John W. Kennicott et al. are complainants, and the Board of Supervisors of the County of Wayne et al. are defendants; and the said examination was taken by me, de bene esse, because said witness, William R. Hodges, resided at New Orleans, in the State of Louisiana, more than one hundred miles from the city of Springfield aforesaid, the place where the court in which said suit is pending and to be tried was appointed by law to be held, and no notification was given to the said defendants of the time and place appointed for taking the said deposition to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants were not, nor did have any agent or attorney within an one hundred miles from the place of caption on taking said deposition, to whom said notification could be given; and I therefore proceeded with said examination.

Deposition of Wm. R. Hodges.

WILLIAM R. HODGES, witness as aforesaid, being carefully examined, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says: I am about 44 years of age, and reside at Kenner, Jefferson Parish, Louisiana; my business is that of a merchant. During the year' 1860 & 1861, I did business in the city of New York as a merchant; during that time I became purchaser, for a valuable consideration, of "construction bonds" of the "Mount Vernon Railroad Company of Illinois," of the nominal value of forty-nine thousand five hundred dollars, (49,500.00,) and of detached interest-warrants or cou-

pons of like bonds, of the nominal value of twenty-seven thousand dollars, (27,000.00,) which bonds and detached coupons are the same claimed as mine in the bill of complaint in this suit; said bonds and coupons were acquired by me in good faith in the regular and due course of business in relation to such securities, for money, and have been so held by me since that time, except during an interval of between two and three years, I having made a sale of the said bonds and coupons in the year 1866, and repurchased them again in the year 1869; I have frequently been absent from my residence during the past ten years for several months at a time, and on these occasions I have been in the habit, before leaving home, of placing such valuable papers as I might happen to have on hand at the time in the hands of my brother (Mr. Charles Hodges) for safe-keeping until my return, and have frequently so placed the said bonds in his hands for that purpose, and so
142 received them back from him again. On the last of these occasions, i. e., on or about the 25th day of January, 1870, I was about to make a journey to Texas, and I placed in his hands for the aforesaid purpose fifty-six (56) of the said bonds of the denomination of $500.00, and 18 (eighteen) of the denomination of $1,000.00, or a total of seventy-four (74) bonds of the nominal value of forty-six thousand dollars, (46,000.00;) three bonds of $1,000.00 each and one of 500.00 having been retained in my own possession; each and all of the aforesaid bonds had twenty-eight of the original interest-warrants or coupons attached to them. The two first (numbered 1 & 2, and dated, respectively, on the 1st Nov., 1859, and the 1st of May, 1860,) having been removed and no more. The bonds so placed in the hands of the said Charles Hodges by me were all of the same series, i. e., the "construction-bonds" of the Mount Vernon Railroad Company of Illinois, and dated the 20th day of April, 1859, and due and payable May 1st, 1874, and numbered as follows: Fifty-six of the denomination of $500.00 each, numbered 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 244, 245, 246, 247, 235, 236, 237, 238, 239, 240, 241, 242, 249, 350, 119, 126, 233, 223, & 255, and eighteen of the denomination of $1,000.00 each, numbered, respectively, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, & 600. The whole of the aforesaid bonds, each with the 28 coupons or interest-warrants attached, were placed by the said Charles Hodges, in my presence, into a tin box, which was locked and fastened by him, and also by him placed within an armoir' or wardrobe in his bed-room, at his residence, at Kenner aforesaid, which armoir' was also locked and fastened by him. I had returned from Texas previous to the 17th of March last—the said Charles Hodges still having the aforesaid bonds in his possession—and, while still in his possession and care, I know that they were accidently burned and destroyed, together with the box that contained them and the armoir' in which they were placed, as well as the entire house, which was burned to the ground on the morning of March 17th, 1870. I was present at the fire, and, with others, made every effort to rescue the said bonds and other valuable items, but the armoir' was locked and the key could not be found, and as we had not the requisite implements at hand to break it open, and the fire being very furious, it had to be abandoned. The house was very large, built mostly of wood, and contained many valuable family relics, nearly all of which were totally consumed, the fire being so rapid that but few of the smaller articles were saved. After the fire, i. e., on the 17th & 18th of March, I assisted to make search among the ruins made by the fire, when we found the remains of the

box in which the bonds had been placed by Charles Hodges, and with it a mass of charred paper burned so much that all writing and printing was illegible, the box being in several pieces—the top separated from the sides & bottom by the heat of the fire.

WM. R. HODGES.

Sworn to and subscribed before me this 29th of June, 1870.
[L. S.] D. URBAN,
U. S. Commissioner.

And I do further certify that the preceding deposition was reduced to writing by the witness William R. Hodges in my presence, after due reading of the same; and *and* that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

143 Witness my hand and official seal at New Orleans on the day and year first above written.
[L. S.] D. URBAN,
U. S. Commissioner.

(Indorsed:) Filed July 2nd, 1870. J. R. Jones, cl'k.
(Indorsed:) Opened at the request of compl'ts' sol'c't's, July 4th, 1870. J. A. Jones, cl'k.

WILLIAM R. HODGES sworn.

Examination-in-chief by Mr. McClernard:

Hodges, W. R., ex. direct.

Q. Mr. Hodges, let me ask you a question: Did you ever see that book before? (Pointing.)
A. Yes; I have seen it.
Q. Was it ever in your possession?
A. Yes.
Q. In whose possession when you got it?
A. I obtained it in New York, from the hands of the former secretary of the company, or the treasurer, I think, of the company, Mr. Lewis.

Record-book obtained by him through Lewis.

Q. Through him or not?
A. Not from him but through his instrumentality.
Q. Through Mr. Lewis' instrumentality?
A. Yes, sir.
Q. What relation did he bear to the company.
A. He was secretary or treasurer; I forget. He was treasurer.

Lewis' character, treasurer or secretary.

Mr. SCATES. The minutes show that.
Mr. KNAPP. Who did you get them from?
A. Don't know; some person to whom he introduced me; don't remember.
Q. (M. M.) Where?
A. In New York, in 1869.
Q. What time of the year?
A. Must have been in May or June.
Q. Brought to you?
A. At the office in Water street.
Q. Your office?
A. No; in the office; don't remember whose office it was.

Book brought to witness at an office in Water st. by a person unknown.

Q. Did you inquire for this book?
A. I did; probably two or three times?
Q. Never had seen it before, had you, at all.
A. Don't remember that I had at all.

Q. Did you get it of Mr. Lewis?

A. Got it from the person I spoke of; don't remember his name; never have seen him since; don't know where he got it of his own knowledge.

Q. The way he got this book?

A. That is the way. I was interested in finding the records of the company; inquiring for them I discovered them. I discovered them in that way.

Q. Did you go to this particular place by Mr. Lewis' direction?

A. I did.

144 Q. There got this book?

A. Yes; don't know the person who brought it.

Q. Live there yourself, do you?

A. No; I don't reside in New York.

Q. In the same connection I will ask whether any one prompted you?

Witness acted by request of counsel.

A. It was at your request that I did so. That was the reason of my having looked for these things.

Q. He told you where to find them?

A. Yes.

Objection.

Mr. KNAPP. We object.

Reading from minutes.

Mr. SCATES. (Reading from the book, page 3, date of February 1st, 1860. A special meeting of the board of directors, at St. Nicholas Hotel, &c.) That is signed by Grant. Six or seven pages further on, (reading,) that was the organization of the board for another year. Page 10, at the bottom of it there is a date of 26th March. This is entered after and dated before this last one; March 26, 1860.

The COURT. May have been intended for '61.

Error in date, '60 should be '61.

Mr. SCATES. It was '61—a mistake—because the last up here is Dec., '60, making it for '61—evidently a mistake.

The COURT. Makes it '61.

Mr. SCATES. (Reading.) That is the last. These minutes are signed by Charles W. Lewis, the secretary.

Deposition of Mr. Hodges offered.

Gentlemen, I offer this desposition by Mr. Hodges.

The COURT. You can have him examined orally if you prefer.

Mr. BROADWELL. It is all in the desposition there.

Mr. GOODWIN. We offer it to save time—mere formal matter. He wasn't here then.

Mr. KNAPP. We would like to ask him some questions.

The COURT. Cross-examine him if you wish; he has been sworn.

Cross-ex.

Cross-examination by Mr. Knapp:

How many bonds.

Q. During the year '60 and '61 you were doing business in the city of New York, as a merchant? How many different times did you acquire any construction bonds?

A. I acquired all I have at once.

Q. During what time?

At first $100.

A. I believe in '61. I believe in April, '61. I had something like one hundred thousand dollars, but I returned a portion of them and I had the numbers stated there remaining.

How obt.

Q. From whom obtained?

A. Partly from the secretary or treasurer, Mr. Lewis, and Mr. Wilson.

Q. Judge Wilson?

A. Yes.

Q. All you got you got at the same time. Did you get them from these two different persons?

A. I got them from these persons; I suppose from the treasurer, but I made my negotiation with the two persons, both present.

Q. All you got you got at once?

145 A. Yes.

Q. Something like a hundred thousand dollars?

A. Originally—a portion of them returned. Part returned.

Q. Who to?

A. To the secretary—treasurer—Lewis.

Q. What do you mean, then, when you say that you became the purchaser of forty-eight thousand five hundred dollars?

A. I mean an original loan of something over a hundred thousand dollars, bonds.

Q. How much did you loan them?

A. I first loaned six thousand dollars upon the original loan, and a portion of the original bonds I returned and became purchaser of the balance. First loan, $6,000.

Q. Who did you pay the money to?

A. To the treasurer.

Q. Was the loan made to the Mount Vernon Railroad Company?

A. No; it was a transfer from some other person, the loan being originally taken by some other person. A transfer.

Q. Who did you loan the money to?

A. To the company; I believe so, *I believe so*, or it was to the treasurer individually, I don't know which.

Q. Do you know who made the bargain with you?

A. It was made partially with the treasurer, partially by Wilson; both parties to it. Who money paid to.

Q. You say you loaned at one time six thousand dollars. Who did you pay that to?

A. I paid it to the treasurer of the company, Mr. Lewis.

Q. Did you give him a check for it?

A. Don't remember.

Q. Do you remember where you paid him this money?

A. At my office in New York.

Q. Subsequent to that how many loans did you make?

A. I made a payment of seven thousand five hundred dollars. Subsequent payment, $7,000.

Q. Was that the second payment?

A. I can't tell you, I have made him so many payments; and several of them, I can't tell the order of them.

Q. What money did you pay—what sort of money?

A. It was United States money. Kind of money paid.

Q. No United States money I know of, unless coin.

A. I don't suppose coin. It was money.

Q. What sort of money?

A. I don't remember what sort.

The COURT. State whether current or uncurrent?

A. What I paid was current money, good money.

Q. Was that money ever paid back to you?

A. No, sir; never by anybody.

Q. That brings me to what was given. State to whom you made this loan; on whose account.

A. My own account.

Q. To whom?

A. I don't know, sir. It was paid by me to Mr. Lewis.

Bonds, when and how received; as security first.

146 Q. And you received these bonds at this time?

A. I did.

Q. As security?

A. Yes, sir.

Q. Didn't you become the owner of some after that?

A. I became owner upon his giving me a stock in it. That was a sale. I took them on my own account. They were in the first place deposited with me as a pledge, as a collateral.

Q. You first received them as collateral. Subsequently how did you acquire a title?

Next as stock by assignment.

A. By an assignment from the same party, Mr. Lewis.

Q. By a sale?

$48,500 bonds for which witness paid in gross $70,000.

A. Yes; I purchased them from him—forty-eight thousand and five hundred dollars.

Q. How much did you pay for them?

A. Can't tell you exactly. Can tell you in gross—about seventy thousand dollars.

Q. Forty-eight thousand dollars, (laughing.)

A. (Smiling.) I should like to have some of the money back.

Q. Certainly.

Coupons included.

A. I would say now that included coupons, however.

The COURT. You paid about par for them, including coupons?

A. Yes, sir.

Q. Have you all those bonds to-day?

A. Yes, sir, some of them; a portion of them are destroyed.

Q. How many of them have you to-day?

Only 4 bonds left. Balance destroyed.

A. I have only four, the balance destroyed.

Q. What denomination?

A. Three one thousand, one five hundred.

The COURT. You claim to recover for the destroyed bonds? Perhaps you had better examine him upon that evidence.

Q. To whom did you give—did you give those other bonds up?

A. I did not pay the seventy thousand dollars at the time. I gave a portion of them up. A portion of them were given up when the original purchase was paid by me. Then, afterwards, I acquired some coupons, which are in the calculation of seventy thousand dollars.

Q. Did you ever deliver any goods for bonds at all?

A. No, sir.

Q. How much interest was due when you bought those bonds?

A. I don't think any were overdue when I bought them. No, I don't think there was anything overdue.

Mr. SCATES. There were two coupons detached.

How much interest due when bought.

Q. Two years interest matured when he acquired them?

A. There were some coupons cut off.

Mr. BEECHER. They were delivered to you afterward.

'147 Q. Mr. Hodges, you say you have only four thousand-dollar bonds; the balance ——

A. Three thousand five hundred. I think three one thousand and one five hundred.

Q. Did you hold them all the time?

Bonds transferred to brother.

A. No; not the whole time. I transferred my interest on leaving for Europe. I transferred them to my brother.

Q. When was that?

A. In '66.

Q. How long were they transferred?

A. I remained abroad two years, and afterwards I took them back again.

Q. Did you sell them to your brother; did any consideration pass?

A. I indorsed them to him.

Q. Was there any consideration for that indorsement?

A. There was a general account between us, and I assigned them to him for any proceeds that might be got, to be credited to me. We had a large account together, always involving a considerable amount of money.

Q. Nothing really paid to you by your brother?

A. No.

Q. They were delivered back by your brother to you?

A. Yes, sir; the identical bonds.

When. In '68 or '9.

Q. What time was that?

A. That was in '68, or the early part of '69.

Q. You have been the owner ever since?

A. Yes, sir.

Q. That's all.

Redirect.

Mr. MCCLERNARD. Mr. Hodges, one question: You say you received these bonds on account, and paid so much?

A. Yes, sir.

Q. And the result was that you had to take them, and then you paid the money on their bonds?

A. I paid further money upon them.

Q. In all, seventy thousand dollars for the bonds and coupons?

A. That is to say, about; in the amount ——

Q. The consideration amounted to, say seventy thousand dollars?

A. Yes; about.

Mr. BROADWELL. I will state, if the court please, at the time of filing this bill we had the bonds in possession. The numbers were all inserted in the bill, and the bonds have been destroyed by fire since that time.

Destroyed bonds.

The destroyed bonds.

I will first read the deposition of his brother in regard to the destruction of the bonds.

Deposition of Cha's Hodges.

This witness is named Charles Hodges.

Mr. McCLERNARD. I had the numbers before the suit was brought to us, and the numbers of all these bonds are in the original bill.

Mr. KNAPP. Mr. Hodges suggests this fact, and makes himself party to this suit.

Variance in numbers.

148 Mr. BROADWELL. Mr. Charles Hodges says (reads Charles Hodges' deposition) a discrepancy as to one of the numbers on the bonds was discovered in the description contained in the depo'tion, which the court admitted might be a mere clerical error.

Mr. BROADWELL. We have now the deposition of Mr. William R. Hodges himself.

The COURT. The same deposition mentioned before?

Mr. BROADWELL. No, sir; made since the destruction of the bonds.

Deposition of W. R. Hodges.

(Reads the deposition of William R. Hodges.)

The COURT. (Interrupting.) Compare the numbers and see whether they correspond with those mentioned in the original bill.

(They were compared.)

The COURT. Those are all right.

(The reading was concluded.)

Mr. BROADWELL. I would state that in the supplemental bill filed since the destruction of the bonds, we make one of the bonds an exhibit.

One of the bonds exhibited.

Mr. McCLERNARD. Showing the kind of bonds destroyed. We have the ruins here of the tin box which contained the bonds which were destroyed.

Rob. Allen, notary.

Major ROBERT ALLEN, notary, sworn.

Examined by McClernard:

Parcel containing remains of destroyed bonds.

Q. Take that parcel and look at it (handing the witness a package about 6 in. by 9 inches, and about 3 inches thick, carefully secured.) State if you know anything about it.

A. Yes, sir; I received it.

Q. Who endorsed it; you?

A. Mr. Hodges endorsed it in my presence.

Q. Did you mark it?

A. I witnessed it.

Q. Was it in that condition when you put your signature there?

A. Yes, sir; it appears to be in the same condition.

Q. When was it this took place; is the date there?

A. July 7, 1870.

The COURT. (To the defense.) Do you want to see it?

(The package was opened and the ruined tin box displayed.)

Mr. McCLERNARD. While that is doing I would like to ask one question.

To Mr. Hodges. Do you recollect that?

(Pointing at something which the reporter did not see.)

A. Yes, sir; I do.

Q. That I put in that paper while you were here last July?

Mr. HODGES. Yes, sir.

The COURT. Those are the remains of the box?

Mr. HODGES. Yes, sir; the remains were brought without being disturbed, as much as possible.

(Here the box itself was opened and the contents exhibited.)

149 *Opening of the box.*

Tin box contained in parcel opened.

The COURT. Evidently the remains of a box. (Smiling.)

Mr. MCCLERNAND. Mr. Hodges, is that the box; are these the remains of the box?

A. Yes, sir.

Q. And those are the remains of some of the bonds upon which you are suing in this case?

A. Yes, sir; some of the bonds.

The COURT. If bonds were in there they are totally destroyed.

Mr. BEECHER. The maker of that box can't get any certificate. (Laughter.)

Mr. MCCLERNARD. I will ask him, if the court please, if the bonds were in the same general series?

A. They were the same series of bonds.

The COURT. Let him state as to the numbers.

Q. I see there is a discrepancy in your brother's statement as to certain numbers, 328–'9–'30, described in the deposition as 228, &c.

A. These are the bonds referred to; I suppose that was a clerical error.

Q. Those are the bonds intended to be described?

Inspection of cinders.

Mr. KNAPP. (Rising.) Let me see those bonds a moment. (Moving to the box and taking one or two of the cinders to the light.)

Mr. BROADWELL. The five hundred dollar bond was in our hands at the time.

Mr. KNAPP. (To Mr. Hodges.) Were there any other papers in this box besides these bonds?

A. Those bonds were not in my hands.

Mr. KNAPP. You are too literal. I meant——

A. I think only those bonds. I am not sure about that, however.

Cross-ex. of Mr. Hodges by Mr. Knapp.

Mr. KNAPP. You delivered these to your brother on going to Texas, I think you said. So you put them into this tin box?

A. Yes.

Mr. KNAPP. Did you deliver at the time any other papers besides the bonds?

A. Yes; I delivered him some other papers; I don't remember exactly what they were; as I said, I was in the habit of delivering him any papers I chanced to have in my possession at the time.

Mr. KNAPP. I think you said you thought there was nothing but the bonds in the box.

A. I think nothing but the bonds; I don't think any other papers were put into it but the bonds.

Mr. KNAPP. Were they wrapped up in a paper?

A. Yes, sir; they were tied together; had a papper wrapped, perhaps, and bound round it—rolled up in a paper.

Mr. KNAPP. Were you present at this fire?

A. I was.

Mr. KNAPP. This charred paper found by you when you discovered the box in the ruins?

150 A. No; I think it was found by my brother. I was present at the time, however.

Mr. KNAPP. These bonds—of course, not necessary to ask the question—never had been protested by a notary, or anything of that sort?

A. I don't quite understand what you mean.

(Mr. Knapp here called the attention of the court to a cinder in his hand.)

The COURT. No writing on these any more than those.

The word "protest." Mr. KNAPP. On this very legibly, in print. On this charred paper, right here, is the word "protest." Then follows the letter "N."

The COURT. (Taking it & examining it.) Very plain. That may have been an outside wrapper. The word is very plain. Do you see it or any of the rest? Possibly it may have been on the outside.

Exam. direct by Mr. McC. Mr. MCCLERNARD. Well, about that: may we ask a question about that which will explain it?

(To Mr. Hodges.) State whether those remains there consist exclusively of the consumed bonds—destroyed bonds—or whether anything else was included in the remains; or, in other words, state to the court how these remains were collected.

Probable mixture of remains. A. Where the box was found, sir, there was a heap of charred papers about it, in it, and under it, &c. There were a number of books in the same armoir' and safe in which this was placed. The paper was taken up promiscuously from about the box. If I remember rightly, there were found—it was surrounded by part of that rubbish like that. (Illustrating.)

Mr. KNAPP. Were these bonds ruled paper? You can see it very distinctly.

Mr. MCCLERNARD. You say the charred matter was collected. Was some of it put in a newspaper?

A. Yes, sir.

Mr. MCCLERNARD. The probability is that other matters were collected?

A. I remember that there were a number of different papers in the armoire at the same time—letters, deeds, and so on—all together in the same armoire, all destroyed at the same time; books also—numbers of books there.

Mr. M. The remains of which were also in the same place?

A. All in the same place.

Mr. M. So that the remains were displaced by books and other material—some of the ruins there? (Pointing to the box.)

A. Yes, sir.

Words "and we the undersigned." Mr. KNAPP. In the same armoire? Here is a piece of paper here with names "and we the undersigned" upon it.

A. There were various papers, deeds, and documents of

various descriptions—books and numbers of papers, letters, &c., all in the same armoire.

Mr. McCLERNARD. These remains—can you say whether they consist exclusively of what is destroyed, or whether in part of other matter?

151 A. They were taken up with those remains that were close to the box, remains of everything in the armoire.

Mr. BROADWELL. We will offer those bonds.

Mr. McCLERNARD. Now, may it please your honor, we offer these four bonds in evidence. The 4 bonds not destroyed.

Mr. KNAPP. We object to them without proof of execution.

Mr. STUART. They are collateral papers.

Mr. KNAPP. Not our bonds at all. We say we don't know anything about it; not our bonds. Of course, if they were we couldn't deny it.

The COURT. Do you wish to cross-examine?

Mr. KNAPP. No, sir.

Mr. McCLERNARD. There is a memorandum (pointing to a cinder) of so many bales of cotton. Memorandum bales of cotton.

(Mr. Hodges takes it and brings it to the light.)

Mr. SCATES. (Inspecting one of the four bonds.) These are all, to the best of my knowledge, the signatures of the persons. This is signed by Mr. Grant. Here is a coupon signed by Mr. Grant.

Mr. STUART. Here is one of them not sealed.

Mr. SCATES. There is the seal, there.

Mr. STUART. That's not a seal. That is General Washington. (Laughter.)

Mr. McCLERNARD. (Exhibiting.) There's our coupons—detached coupons. Detached coupons.

Mr. KNAPP. Same character as these others, I suppose. We don't care about seeing them. They have got to be filed.

Mr. FREEMAN. They ought to be filed. Filing of bonds.

Mr. HAY. If the case comes to a decree.

The COURT. Our purpose is to file them, and direct the clerk to place them all on deposit. We have no safe here.

Let the understanding be that the parties shall be allowed the liberty of presenting the bonds, (the other side being present.) Put them in possession of the clerk, and he can deposit them.

The court took a recess until two o'clock.

UNITED STATES OF AMERICA,
Fifth Circuit and District of Louisiana:

Be it remembered that, on the twenty-fifth day of the year of our Lord 1870, I, D. Urban, a United States commissioner duly appointed by the circuit court of the United States for the 5' circuit and district of Louisiana to take affidavits and acknowledgments of bail, have caused to appear before me, at my office in the custom-house building, in the city of New Orleans, to be examined, a witness de bene esse, William R. Hodges, on behalf of complainants, in a certain suit depending in a circuit court of the United States, in and for the circuit and southern district of Illinois, holden at the city of Springfield,

wherein Joseph W. Ward and others are complainants, and The County Supervisors of Wayne County and the Mount Vernon Railroad Company are defendants; and the said examination was taken by me de bene esse, because said William R. Hodges, witness, resided at Kenner, in the parish of Jefferson, State of Louisiana, more than one hundred miles from the city of Springfield, the place where the court in
152 which said suit is pending and to be tried was appointed by law to be held; and no notification was given to the said defendants of the time and place appointed for taking the said depositions, to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants were not, nor did have any agent or attorney, within *an* one hundred miles from said place of caption on taking said deposition, to whom said notification could be given; and I therefore proceeded with the said examination.

Deposition of Wm. R. Hodges.

And the said witness, WILLIAM R. HODGES, being carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am about 44 years old, and reside at Kenner, in the parish of Jefferson, State of Louisiana. My business is that of a merchant. During the years of 1860 and 1861 I did business in the city of New York as a merchant. During that time I became the purchaser, for a valuable consideration, of construction-bonds of the Mount Vernon Railroad Company of Illinois, of the nominal value of forty-eight thousand five hundred dollars. Said bonds were acquired by me in the regular and due course of trade in relation to negotiable securities for money.

W. R. HODGES.

Sworn to and subscribed by me this 25th day of January, A. D. 1870.
[L. S.]

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the witness in my presence after due reading of the same, and that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

Witness my hand and official seal, at New Orleans, on the day and year first above written.

[L. S.]

D. URBAN,
U. S. Commissioner.

(Indorsed:) Filed and opened at request of Messrs. McClernand and Broadwell. Feb'y 10th, 1870. J. A. Jones, clk.

Notice.

Circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Wayne & Mt. Vernon Railroad Company. } Bill in chancery.

Mr. Charles A. Beecher, att'y for defendants:

Please to take notice that Samuel J. R. Wilson, of Wayne County, Illi-

nois, is a witness whose testimony is necessary in this cause, and who resides in said county; that said Wilson will be examined on the part of the complainants in this cause before me, a notary public duly appointed by the State of Illinois for the county of Wayne, in the State of
153 Illinois, at my office, in the town of Fairfield, in said county of Wayne, in said southern district of Illinois, on the twenty-third day of August, A. D. 1869, at ten o'clock in the forenoon, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated Fairfield, the 23d day of August, A. D. 1869.

Yours, etc.,

[L. S.] JAMES McCARTNEY,
Notary Public of Wayne County, Illinois.

I hereby accept and acknowledge service of copy of the above notice, and waive all objection to the length of time between the date of service and the time of taking said deposition.

Fairfield, August 23d, 1869.

C. A. BEECHER,
Attorney for Defendants.

Copy of bond.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS.

The Mount Vernon Railroad Company.

No. 471.] [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer, one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed, at the said Bank of North America.

One thousand dollars.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued, for the purpose of the construction and completion of the said railroad, and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee of one hundred thousand acres of land, in the county of Wayne, in the State Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad; and also, by a mortgage to said Isaac Seymour as trustee of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Com-

pany has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed,
154 at the office of the company, in the State of Illinois, this
[L. S.] twentieth day of April, one thousand eight hundred and fifty-nine.

L. CASEY, *President.*

NORMAN A. SMITH, *Treas.*

(In red ink across the face:) 1,000.

The foregoing is one of a series of bonds authorised and isued by the Mount Vernon Railroad Company in sums of $500 & 1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors, passed the 1st day of March, A. D. 1859.

I. SEYMOUR,
Trustee.

Copy of coupon.

Copy of coupon.

(In red on face:) 26.

1872. The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 31st day of May, 1872, it being the interest to that date on bond No. 471 for one thousand dollars.

For the company:

A. N. GRANT,
Secretary.

26 additional & similar coupons on each bond.

The mortgage of the Mt. Vernon Railroad Co. was foreclosed on default of answer, and mortgage property sold.

Defendant's side. *Defendants' side.—Swearing of the witnesses.*

Mr. FREEMAN. We would like to have our witnesses sworn.

(S. J. R. Wilson, R. P. Hanna, and Mr. Beecher were here all sworn together.)

S. J. R. WILSON.

Examination direct by Mr. Freeman:

Wilson, co. judge; when. Q. Judge Wilson, will you tell whether you were county judge of Wayne County at any time, and what time?

A. I was, in the fall of 1859, I guess till '61—fall of '61.

Q. Well, as a preliminary to some other matters I want to examine you about, I will ask you: Do you recollect a vote that was taken in Wayne County, in 1855, on the subject of swamp-lands? 155

County vote in 55.

A. Yes, sir; I recollect something about that.

Q. You were taking a prominent part in that canvass?

A. I was.

Q. Will you state to the court what was the character of the canvass and the pretences of those who were making it; the different pretences?

Object to show a fraud.

I propose (to the court) to show, if I can, that this vote was a part of a fraudulent scheme to wrest these lands from Wayne County. That there were two schemes used in the canvass—one was to run an east and west road, another was a north and south road, and the plan was to reconcile all the conflicting interests and get them all to support a general proposition—I propose to show by Judge Wilson.

The COURT. Probably some testimony has been received that is not entirely legitimate.

Q. Judge Wilson, will you answer?

Two roads canvassed.

A. The fact is there was canvassed two roads, probably; the general canvass was, however, in favor of the Mt. Carmel, Fairfield and Belleville. It was understood at that time to be controlled by General Pickering. That was the understanding; I don't know whether it was so or not. But then there were some who advocated a north and south road.

Q. Now I want to know, so far as you are aware, the general understanding in the county, whether the object was to decide by that vote whether the lands should be bestowed in relation to any particular road or merely to establish any general scheme to divert them from some other purpose.

Was the vote a diversion.

Mr. MCCLERNARD. We object.

Objection.

The COURT (after hearing pro & con.) You may go on with the evidence.

Q. What was the object; was the proposition merely to establish a general scheme or for any particular road? What was the purpose of that vote.

A. There was a difference in the county board the spring before; some wished to sell these lands and appropriate the proceeds to the schools, and roads, and bridges. This was got up, I think, *for* to prevent the county court from disposing of them.

Schools vs. R.R.

Q. To settle?

Mr. GOODWIN. We make a general objection to that whole thing.

Q. The proposition was to establish a general policy?

A. That was my understanding at that time.

The COURT. Mere general evidence; it does not say whether the railroad shall run from one point to another; it leaves that all indefinite.

Q. Now, Judge Wilson, I will ask you in relation to the execution by yourself of a pretended deed of trust to one Seymour. You recollect that?

Deed of trust.

A. Yes, sir.

Q. Will you state where you signed your name?

Where signed.

Objection.

Mr. McCLERNARD. I object to that, sir.

Mr. GOODWIN. Here is the record of the court,
156 which shows where he signed it. You can't attack that.

Mr. STEWART. That's an objection you can make to the court.

The COURT. Better let the witness state.

A. It was done at my house.

Q. State the circumstances.

A. The circumstances was about this: Governor Casey and Mr. Vorhies, Grant, I think, and Mr. Vanduser came over to Mount Vernon and brought the papers. I was living

Meeting at witness' house.

in Fairfield, I think, at that time. They came to my house and I looked at them and told them I didn't reckon we could do anything them; but if they requested it I would call a special term of court. They said no, they didn't care.

Circumstances of signing.

Mr. Scott, one of the associates, accidentally came into town, or whether he was sent for I don't recollect. He was there to our meeting and everything was done at my house, and the signing of the papers was done there.

Q. You did not attempt to hold court there.

What witness told the company at the time.

A. Not at all. I can state also what I told Mr. Casey, Voorhies, &c.; that we could not do anything legal that way; that if they requested we would call the court together. They said they would be satisfied with this; that they could raise the money upon that to build the road. I said if they did we would do anything we could to secure the lands to them; if not we would take all the benefit we could.

Q. Norman Smith?

Smith not present.

A. Not present.

Q. Not present at the execution of that instrument?

A. Wasn't named.

Q. What relation did he bear?

A. I believe he was treasurer of the Mount Vernon Railroad Company.

Q. And one of the firm, Vanduser, Smith & Company?

A. Yes.

Order of co. court, '59. Genuine?

Q. Here is what purports to be a copy of the order of the county court of Wayne; the copy dates back to the special term of 1859.

The COURT. Or when the deed was executed.

Q. Just look it over, if you please, and state whether any court was held at that time?

Objection.

Mr. McCLERNARD. I object to that, sir. We have an authority on the point which ought to be conclusive.

Record made up when?

The COURT. Was such a record made at the time? And the circumstances?

A. At the time of signing there was not, I think; not to my knowledge.

The COURT. When was that made?

Don't recollect.

A. I could not tell for I do not know; don't recollect.

The COURT. Appears to be a record of the county court.

Q. Do you know?

A. I looked at the record in Fairfield, on Friday last, I believe, at the date of filing.

Q. Recollect what that was?

A. Third day of May.

157 Q. That order purports to give the page of the record-book?

Mr. McCLERNARD. We wish to be understood as objecting. Objection.

The COURT. Do you pretend there is no such record made?

Mr. HANNA. There is no proof showing ever to have been such a one.

The COURT. I will hear the evidence. I don't know what effect it may have.

Mr. McCLERNARD. They have no right to question the date.

Q. Now, on this day, the 20th of April, '59——

The COURT. He may state when the record was made up after the filing of this.

Q. Can you state whether this was made up prior to the third of May?

A. Well, I could not state from positive recollection; my recollection is, it was made probably after I had been to New York. Record probably made up, when?

Q. When was that?

A. I can't recollect the date.

Q. After the mortgage was made?

A. Yes.

Q. Upon the execution of the deed of trust did you go to New York?

A. Yes, shortly afterwards; can't recollect how long.

Q. Did you take the deed with you?

A. I didn't; I think Mr. Voorhies took it; that is my recollection.

Q. How soon after the execution was it?

A. I could not give anything definite about it; not long afterward.

Q. Within the month of April, probably? Can you say it was the 20th?

A. I don't believe I could tell.

Q. After May?

A. My recollection is, some time in May.

Q. This order was drawn up after your return? After witness return from N. Y.

A. That is my impression.

Q. You state positively, Judge, that the execution of the deed was at your house, and not in court?

A. Yes, sir; and the whole consultation about it was there.

Q. Mr. Smith was not there?

A. Not that I *seed* or heard of.

Q. As the meeting was at your house, you must have known it had he been there?

A. I would have known it.

Q. Now, Judge, when this order of court was made, who was present? Who present when record made up.

A. I don't recollect whether anybody was present but myself, and I don't recollect particularly, only what I see on the signatures.

Q. Mr. Smith says here, you had a power of attorney to act in their behalf in court matters? Power of attorney for Scott.

A. One of them; I think Mr. Scott.

158 Q. Did you act in that way in regard to this matter; the making up of this order?

A. I don't recollect particularly about that. The signature seems to be my handwrite.

Q. Both signatures?

A. Yes.

Q. Judge Scott's?

A. It looks that way; I looked Friday last; haven't any particular recollection of it.

Director of the company, when.

Q. Now I want to ask you in another branch of the case: At what time was you a director of the Mount Vernon Railroad Company?

A. I expect it was near '59.

Connection with Belleville, &c., co.

Q. Well, state to the court what efforts were made by yourself, or by your direction and knowledge, under the incorporation of the Mount Vernon Railroad Company, to procure some sort of arrangement with the Belleville and Fairfield Company, or those who pretended to own the charter? State all in relation to that.

A. Well, we tried, or I was requested and employed to try an' negotiate a contract with General Pickering.

Q. What sort of a contract? Why with him?

A. Because he was understood to control all the charter there was east of Mount Vernon at that time.

Q. State what efforts were made, and how successful they were.

A. I went to see General Pickering once or twice myself; could not effect anything, and then we undertook to get through the legislature—I believe it was '58 and '9—the extension of the Mount Vernon Railroad all the way through Wayne Co.

Q. Will you tell us (so that we can get them in chronological order) what efforts were made with Pickering to get a connection from him? Did you make any efforts?

Offers to Pickering.

A. I did. I made some offers. Company made some offers to General Pickering—the county.

Q. In behalf of the Mount Vernon Railroad Company?

A. Yes, sir.

In '59.

Q. That was in '59?

A. It was.

Q. Did Governor Casey consent?

A. Yes, sir; it was by his advice. Governor Casey was then president of the board, if I recollect.

Company's understanding.

Q. What was the understanding of the Mount Vernon Railroad Company—you being one of the directors—as to whether they had any arrangement?

Objection.

Mr. McCLERNARD. I object to his understanding.

The COURT. He may state whether he knows of any consultation between that and any other company.

Q. Why were you employed with the company to go and negotiate?

No charter beyond Mt. Vernon.

A. Because the company said they had no charter going east of Mount Vernon.

Q. In what manner were you employed? Was there a meeting of the directors or anything of that kind, or was

159 it merely a request of Governor Casey, as president, and others?

A. I think it was merely at the request of those in authority to go there. Don't recollect a particular meeting to that effect.

Q. Did Governor Casey and the other directors consent?

A. Yes, sir.

Q. Did you understand prior to that that you had any arrangement?

Mr. McCLERNARD. We object to "understanding."

Q. Did you know of any?

A. There was not, to my knowledge.

Q. And you acted upon this state of things?

A. Yes, sir.

Q. Was you successful?

A. Not at that time.

Q. At any time?

A. I was, along with Mr. Lewis and Mr. Davis. We went over at one time to buy Mr. Pickering's franchise, and they made a contract with Mr. Pickering for his franchise of a road.

Q. Who were with you?

A. Mr. Lewis—Charles W. Lewis and Charles Davis. Mr. Lewis was then, I believe, acting as treasurer of the company and director.

Q. That was a conditional contract?

A. Yes, sir; it was.

Q. Ever carried out?

A. I think not. When the time for the payment of the money came, we went to try to get an extension from General Pickering, and General Pickering would not hear to anything of the kind; he would not give me another hour. The Pickering contract.

Q. In 1859—at that time you knew of no arrangement between the Mount Vernon Railroad Company and any company east?

A. I knew of none.

Q. And you acted in behalf of the company at the instance of the directors and Governor Casey?

A. Yes, sir.

Q. What did you put in that contract? Contents of contract.

Mr. GOODWIN. The contract speaks for itself. An objection is made. It is not important. It is here. Objection.

The COURT. Was it in writing?

A. I think it was.

Mr. SCATES. This is the one they objected to my reading. I was willing to put everything—all the res gestæ—before the court. It is down at the hotel now. I can get it.

The COURT. Of course the witness need state nothing about it. It may be considered as in evidence.

Q. State whether there was any discussion among the directors of the Mount Vernon Railroad Company about that time as to the necessity of getting some connection. Discussion in the board.

A. Yes, sir; there was.

Q. Let me ask whether the directors stated that they had none.

A. The directors stated, and it was understood by all, that they had none.

160 Q. Were you one of the directors?

The COURT. He has already said there was none, according to his knowledge. I suppose that's all.

Q. We want to prove, by parol, whether there was any connection.

The COURT. Go on.

Who else employed?

Q. Judge, do you know whether any other person was employed by the Mount Vernon Railroad Company to assist in getting a connection here?

Hanna.

A. My recollection is that Mr. Hanna was employed also.

Q. Have you any personal knowledge of his efforts and the results?

A. I don't think I was ever with him there.

Q. That was the object.

A. That was probably the direction of the company.

Vanduser, Smith & Co. contract.

Q. Judge Wilson, there is a contract in evidence here, purporting to have been made between somebody in Wayne County and Vanduser, Smith and Company, to build a road through Wayne County. Can you recollect that?

A. Yes, sir.

Mr. GOODWIN. Don't the contract show?

Q. I want to show some other things; that there was no connection here.

The COURT. Let him answer whether they had any connection established at the time.

A. They had none that I knew of.

Q. Tried to get one through the legislature? I wish to show that they tried, but failed.

Mr. MCCLERNARD. We make objection.

The COURT. State, (to the witness.)

A. They got me——

The COURT. Did you apply and succeed?

A. We did apply, but didn't succeed.

The COURT. That's all.

Q. Governor Casey joined in that effort; that was some time as late as 1859?

A. Yes, sir.

Q. I want to ask you whether you ever withdrew any bonds—Mount Vernon Railroad bonds—from the possession of this man Seymour?

A. I never withdrew one.

Q. Did they probably give Mr. Lewis liberty? What was he—what relation?

A. Treasurer of the company at that time.

In whose employ?

Q. Whose agent were you?

The company's.

I was in the employ of the railroad company. They paid me all the pay I got.

Q. State where Fairfield is. How far from the east line of Wayne County?

A. About 12 miles east of the line of Wayne County.

Fairfield; its location.

Q. Fairfield lies east of Mount Vernon?

A. East; yes, sir.

The COURT. You might just say how far from Mount Vernon to Fairfield.

A. That is some thirty-five miles, I think, from Mount Vernon to Fairfield.

161 Mr. BEECHER. About thirty-four miles—eleven miles from the east or 12 from the west side.

Cross-examined by Mr. Scates: Cross-ex.

Q. Did you not act generally as the agent of the county through all these transactions? Whose agent?

A. Well, I was employed *wunst* by the county to go to New York to put bonds into the hands of Mr. Seymour. The county's.

Q. Put them into the hands of Mr. Seymour—whose hands were they in?

A. Mr. Smith's and Mr. Hearsy's.

Q. You went under what employment?

A. County court.

Q. When was that?

A. Well, sir, I couldn't come at the dates.

The COURT. 1859, I suppose?

A. I think so.

Mr. BEECHER. There is an order of that kind—November, '59.

A. I could not speak from recollection.

Q. What was the object of the order; to change the custody of the bonds? To change custody of bonds.

A. Yes, sir.

Q. What bonds?

A. Bonds of the Mount Vernon Railroad Company.

Q. Well, but there were two sets of bonds—two custodians of bonds.

The COURT. Five hundred—

Mr. MCCLERNAND. Some of them Wayne County exclusively.

Mr. GOODWIN. For Wayne County made a contract to put the bonds into Hearsy's hands.

Mr. FREEMAN. This is subject to our general objection. Objection.

Q. Didn't the county court order that you refer to *refer to* bonds in Hearsy's hands? Bonds, in whose hands.

A. I don't recollect.

Q. Was not that the arrangement?

A. It was the arranement.

Q. Did you make the change?

A. Yes, sir.

Q. Well, state if you did not afterwards put the bonds into Mr. Lewis' hands.

A. Some good while afterwards. Yes, sir; I was called there by the company.

Q. By the company? These were the county bonds. I am asking you what you did for the county?

A. Didn't do anything with the county bonds.

Q. What has become of the county four hundred thousand?

A. I don't know.

Q. Did you ever dispose of any?

A. No, sir.

Q. Didn't you give Lewis an order to dispose of some of them? Order to Lewis.

A. Gave him an order to get them away from Sey-
162 mour.

Q. Has Lewis to issue them to Mr. Davis and others?

A. No, sir; no recollection——

Q. Did you ever have any connection, or assist, with Lewis to dispose of the bonds?

A. No, sir.

Q. Never interested for the disposal of the bonds?

A. No, sir.

Letter from witness.

Q. Did you ever write a letter stating the bonds might be disposed of if you approved it?

A. Don't recollect such a letter.

Q. Would you recollect it if there was such a letter?

A. I might. A great many letters passed between us; but I don't recollect that particular letter.

Q. If you gave an order to Lewis to deliver bonds over to Davis for the purpose of raising money, what was the object.

A. It was for the railroad company, I reckon; don't recollect any such order.

Sale of bonds.

Q. Did you ever dispose of the bonds yourself?

A. Never disposed of a single bond.

Q. Did you ever assign any?

A. Not that I have any recollection of.

Q. Have you any knowledge that any one of them was ever disposed of?

A. I have never seen one of them disposed of.

Q. Well, do you know that none was disposed of?

A. I can't recollect: can't recollect the buyers.

Q. Did you encourage them to buy?

A. Don't recollect that I did.

Q. Did you think the bonds good?

A. We intended to give the lands if the road was built.

Hit it if a deer; miss it if a calf.

Q. You intended to hit it if it was a deer, and if it was a calf, miss it?

A. Expect that was a good deal our feeling.

Q. Bonds good if the road was built. Did you ever tell a purchaser that fact? Ever encourage one buy?

A. Don't recollect anything about it; don't recollect any person that I encouraged.

Direction to Lewis.

Q. Didn't you direct Mr. Lewis to retain the bonds and recover his own claims against the company?

A. No recollection of any such thing.

Q. Did you never direct Mr. Lewis to give bonds to Davis to be disposed of in order to purchase or procure the charter of the Belleville and Fairfield Railroad?

A. No, sir.

Q. No recollection of any of these things?

A. No, sir.

Q. Wouldn't you recollect——

A. It being so long ago—might have been.

Witness' opinion of bonds.

Q. Have you always been in this belief, that the bonds are void?

A. I have.

Q. From the beginning?

A. Yes, sir; from the commencement.

Q. Have you always dissembled to parties negotiating?

163 A. I don't know that I ever did.

Q. Wasn't you present with the board at the time the contract was made for iron? The iron contract.

A. I was there.

Q. Wasn't all that with your consent?

A. Don't know that I took any part.

Q. Wasn't the contract presented by the board for approval?

A. Not to my recollection.

Q. Were you in New York and met with the board?

A. I was, I believe.

Q. Didn't you go there in January, '60, to change the custody of these bonds? Jan'y, '60.

A. Some time in '60; some time in the winter; couldn't say; January or February.

Q. Didn't you preside at the meeting of the directors in January, '60?

A. Might have been such a thing; have some recollection of being at a meeting of the board in New York City; don't recollect presiding.

Q. When that contract was presented, while you were sitting as president, was it unanimously approved?

A. Don't recollect.

Q. Were you present when they negotiated with Mr. Morrison to borrow money to provide funds to pay for the contract for iron?

A. I don't know of any negotiation with Mr. Morrison.

Q. Reported to the board and approved?

A. I didn't so understand, nor don't so recollect, that the board had anything to do with the borrowing of money from Mr. Morrison. Money borrowed from Morrison.

Q. Did the board have anything to do with approving it?

A. Don't think they did. Mr. Crippin and Mr. Kendrick done that.

Q. I admit they were the executive committee; but didn't they report their contracts?

A. Not that I have any recollection; might have been, sir.

Q. You say you never had any connection or interest with Lewis in any of these bonds, nor the sale of any? Interest in sale of bonds.

A. No, sir.

Q. Now you undertake to say you made your signature to the contract, the mortgage, and deed of trust, as an individual, at your house, a mile away from Fairfield? Deeds—how signed.

A. I didn't say a mile away from Fairfield. I say it is probably between thirty and fifty rods from the court-house. I expect it was in the town plat; I think it was.

Q. How did you come to make an order as a court, stating the fact that you made it as a court in court? Order to court.

A. I don't have any recollection.

Q. It don't matter. The record don't forget. Suppose there is such a record, how does it occur?

A. The record, I suppose, is right.

Q. That has not been changed?

164 A. No, sir.

New York record book.

Q. Now, let me ask you if you ever saw the order book of the company, that the company kept of its doings—the board of directors in New York?

A. I may have *saw* it; but, then, I have now no recollection. I expect I have. I wouldn't know the book.

Q. Suppose I read you some orders that were made there, and ask you if you recollect them?

(The counsel read from date Feb. first.)

A. Recollect being there with them parties. Yes, sir.

Q. S. J. R. Wilson, president pro tem.?

A. Well, I don't recollect all that. I suppose is so.

Q. N. Smith presented a contract made at Albany, Jan. 6th, 1860, with the executive committee, by Jameson, &c., &c., ratified and approved?

A. The record is true. I don't have any recollection. I don't recollect of being in the board then.

Q. Did you not state that you went, under an order, as the county's agent?

A. Yes, sir.

Q. Then it was the forepart of '61, not '60?

Mr. BEECHER. It must have been.

A. Yes, sir; I was there in '61.

Q. The contract was made, and Smith was appointed a committee to draft said contract, (reading from the record book of the New York direction,) that is, at this same meeting when you presided. At an adjourned meeting, February the second, the contract with Messrs. Kendrick and Crippin was presented, & (reading) ordered the seal of the company attached. Adjourned to Feb. 3d. You still presided. Do you recollect it?

A. I have a recollection of being there, but do not recollect presiding.

Q. Did you sign the contract—sealed order?

A. Don't recollect; might have done it. They did a great deal there in the board that I knew nothing about.

Q. The book reads: "Pursuant to adjournment, &c., S. J. R. Wilson in the chair," &c., (reading concerning order to give bonds to a bank in Georgia for $29,000 for currency to be used in the iron contract; also, the appointment of an executive committee, &c.) Do you recollect all these? Do you recollect of going there to make that contract?

A. I didn't take much action in the matter. Probably my name was nominally there.

Q. Were you there?

A. I was there.

Q. Any memorandum of any negotiation?

A. No memorandum of any negotiation. I was present, but I took no part in it to amount to anything.

Order to Lewis.

Mr. MCCLERNARD. I believe you stated you never gave any order to Mr. Lewis?

A. Not of my recollection now. I said, "If there is such an order, I gave it," but I have no recollection of it now.

Thomas L. and Dorrence Davis.

Q. Do you know Thomas L. Davis?

165 A. I can't recollect now.

Q. Know Dorrence Davis?

A. Yes, sir.

Q. Don't Thomas L. Davis live in Syracuse?

Mr. GOODWIN. Thomas T. Davis, not L.

A. I can't recollect now. I know Dorrence Davis.

Q. What relation is one to the other?

A. Don't know.

Q. Did you ever act with Dorrence?

A. He was in the company's office, and, I believe, he claimed merely to be agent to negotiate bonds.

Q. Ever act with him as director?

A. I don't know. I believe Mr. Davis was elected director, but I have now no recollection, and I may have done so.

Q. Did you know Jameson, of Mansfield, Ohio? Iron Co. firm.

A. Yes, sir.

Q. Never meet with him?

A. Once.

Q. Elliott?

A. Yes, once.

Q. Morrison?

A. Yes, sir.

Q. Crippin?

A. Yes, sir.

Q. These their handwriting?

A. Can't say.

Q. Do you know that's the contract that was brought in for approval at the time, and which I have read here?

A. Well, sir, I could not say as to that; never read it.

Q. You may read it.

A. I could not say that's any of their signatures.

Q. Didn't they make but one? They did make one?

A. I gave to our judges a copy of all the contracts I knew anything about. Iron contract.

Q. I have got hold of the original since. You gave a copy of it, and you said you took it from the original at the time?

A. I expect I did; I guess so.

Q. Well, it is a copy of this?

A. But I don't know anything about them *m* signatures; don't know that I ever saw one of the men sign *their* name. His own signature.

Q. Judge, do you know that to be your handwrite?

(The counsel here showed the witness a paper upon which, at the suggestion of his associate, Mr. Goodwin, the reporter placed in pencil the mark "1.")

A. I guess it is.

Q. Look at the paper attached as a copy to Grant's deposition.

A. Let me look at the paper first. Well, sir, it looks like my handwriting. It is very similar. It looks like it.

Q. Is that—another attachment to the same on which the reporter, in the same manner, placed the mark "21"—is that yours?

A. Yes, sir.

Lewis' hand writing.

166 Q. Is that Lewis' handwriting—Grant's deposition 3d day of November, 1870, dated?

A. Don't know.

A. M. Grant present at execution of deed of trust.

Q. Was Angus M. Grant present at that time?

A. My recollection is, he was.

Q. I am speaking of the execution of this deed of trust, &c.

A. I think Grant was there at Fairfield.

Q. Do you undertake to say N. Smith was not there?

A. I do.

Q. Did you take note?

A. I said that here.

Q. The 20th day of April, '59, (reading,) now this day the court executed to Isaac Seymour, of the city of New York, a deed or trust recorded on book "B," page 330–341, and a deed of trust recorded on B B, page 341 in '59. Was that the same day you executed that mortgage?

A. I can't speak from recollection. I expect it is, though I can't speak certainly.

Q. December term, '59. The court order. A request of the board of directors of the Mount Vernon Railroad Company to the county court of Wayne County to withdraw $400,000 bonds of the Mount Vernon Railroad Company now in the hands of Hearsy. It is ordered that the above-named bonds be withdrawn from Hearsy's hands, and be withheld until such person, &c., shall be agreed upon by such Hearsy and the county court. Do you pretend to say you didn't get any bonds from him?

A. I didn't say that.

Q. Said you got them from Mr. Seymour?

A. I misunderstood.

Change of custody of bonds.

Q. Now say it again. You were in New York under that order to change the custody for the county, as the county's agent.

A. I did it.

Q. Now where did you get the bonds?

A. I think I got them out of the safe that was in the office that was marked Mount Vernon Railroad Company, but I don't know who controlled the safe.

Q. Didn't go there and bore into the safe? Who was there?

A. Smith.

Q. Do you know what relation he bore to the company?

A. I think Mr. Smith was treasurer. Hearsy was probably a member of the board.

Q. Then do you pretend to say that you don't know from whom you received the bonds?

A. Don't know; Mr. Smith or Mr. Hearsy.

Q. Did you send authority of the county court?

A. Now, I don't know but Mr. Hearsy carried them himself to Mr. Seymour. Don't know that I ever touched them; don't recollect that I did.

Q. Then what became of them?

A. Never saw them any more.

Q. Where did Mr. Hearsy get them?

167 A. Well, sir, I can't answer that question.
Q. Did you know how he came by them?
A. No, sir.
Q. Don't recollect the mode by which you obtained them? Bonds, how changed.
A. The mode?
Q. Don't recollect any man's having them?
A. I think I recollect.
Q. I suppose you know how they came into his hands?
A. Yes, since you have named that.
Q. You had quite forgotten?
A. I hadn't forgotten. Mr. Smith brought the whole of them, all together.
Q. How do you know?
A. I saw them.
Q. I thought you didn't know who took them out of the safe?
A. I don't recollect when they went out. I don't recollect having them in my hands at all.
Q. Didn't you put them into Mr. Lewis' hands?
A. I gave him the order to Mr. Seymour.
Q. Didn't you take his receipt for them—Mr. Lewis'?
A. Don't recollect.
Q. Didn't you give Mr. Lewis your receipt?
A. If I did I suppose there is such a receipt on file.
Q. Have no recollection of all this?
A. Don't have any recollection.
Q. No recollection of giving Mr. Lewis an order to dispose of bonds?
A. No, sir; I do not.
Q. Any recollection of any interest or proportion in the bonds?
A. No, sir.
Q. Or being intrusted in any division of the proceeds of the sale of bonds?
A. No, sir.
Q. Never had?
A. Never did with Mr. Lewis. The agreement between me and Mr. Lewis in '61 was that the bonds *was* out, and if he could take up some more of them and make anything off of them, I was to have some share in that.
Q. What share?
A. I don't recollect; I have an instrument of writing to that effect.
Q. Produce it.
A. Can't, short of going home.
Q. Bonds yours & Lewis' or county bonds?
A. The bonds I understood Mr. Lewis to be out in somebody else's hands, and that he was going to try to get them to ———; don't recollect the particulars of that exactly; but my recollection was that Mr. Lewis had bonds in his hands; that would be the best of my recollection.
Q. You were to have a share of anything that could be made?
A. Yes, sir.

Whose bonds. 168 Q. When they were redeemed they belonged to the company or the county?

A. Don't know; about all out, so far as I knew.

Q. About all gone; couldn't have all got out without your knowing; when were they about all out?

A. That time was in '61; went there in '61.

Q. What time '61.

Left N. Y. when. A. I can only tell about the time I left New York; I think I left New York about the first days of May or—

Q. Previous to that?

A. Yes; I recollect getting home about the 4th.

Re-direct. Redirect by Mr. Freeman:

Specie agency for county. Q. I find an entry of the county court of Wayne County, December term, 1859, there in regard to the custody of the bonds in New York; to change the custody of the bonds; it was as the agent of Wayne County, was it not, for that specific purpose, you went there?

A. Yes, sir.

Q. When you had consummated that, did your agency cease?

A. Yes, sir.

Q. Anything else you may have done you were acting for the Mount Vernon Railroad Company?

A. I went there at different times for the Mount Vernon Railroad Company after that.

Q. Anything further?

A. It was not for Wayne County; never did anything else besides this specific thing; that was all I was ever authorized to do for the county.

Mr. McCLERNARD. I want him to specify the other matters.

A. That was all for the Railroad Company.

Q. Not for Wayne County at all?

A. No.

Recross-ex. Recross-examination by Mr. McClernard.

Q. Didn't you name Charles Lewis, Dorrence Davis, and Ira Hearsy, all living in New York City?

A. I heard of their being there.

Q. Smith?

A. Smith lived in Troy, New York.

Q. With an office in New York? Hearsy?

A. Hearsy lived at Dobbs' Ferry.

Q. All these men transacted their business in the office of the railroad there, in the city of New York?

A. they had an office in the city of New York.

Different agencies of the company. Q. What agency of the Mount Vernon Railroad Company had they for you in the city of New York; how many of these other persons boarded or lived there?

A. They told me at different times; don't recollect the particular agencies.

Q. Do you recollect one single transaction as an agent there? I know (to the court) he was director.

A. I was requested to go there in '60, when they made their iron contract.

169 Q. Yes, I know; as a director; but I am speaking of an agency outside of your action in the board; did you ever transact any agency?

A. Don't know that I did.

Re-direct again by Mr. Freeman:

3d direct. The specific agency.

Q. Just one question: What I want to have understood for you, judge, is that you didn't act as agent for the county, except for the specific thing named in this order.

A. That one thing.

Q. You were an officer of the Mount Vernon Company in the other things—president of the board at their request. (The witness assented.)

Third cross-examination. Third cross-ex.

By Mr. Scates:

Presiding judge of county court.

Q. Didn't you continue to be presiding judge of the Wayne County court from the year '57 till '61?

(The reporter understood the witness to assent.)

R. P. HANNA. Hanna, R. P.

Examined by Mr. Freeman:

Q. Mr. Hanna, will you state whether at any time you were the agent or attorney of the Mount Vernon Railroad Company?

Attorney for Vanduser, Smith & Co.

A. I cannot be very definite with regard to dates. I acted as attorney for Vandsuer, Smith & Company a portion of the time, and only a portion.

Q. That was as late as, probably, what year?

A. Up to the date of this deed. I objected to have anything to do with this deed.

Efforts to get connection east.

Q. Well, now will you state to the court the efforts you made in behalf of the company to get control or connection with these lines east there—east of Mount Vernon?

A. Some time in the summer of '59, I reckon, I received word from some of them, couldn't say now who, to go to Mount Vernon: Some one sent a carriage over after me.

Mr. GOODWIN. This is all objected to. Objection.

A. We had a consultation about getting a charter east from Mount Vernon. They directed me then to go to Albion and see General Pickering, who, it was supposed, had control of the Belleville charter. I didn't know any person of the company except Governor Casey, and I had but little to do with him at that time. Vanduser, Smith and Company employed me. They directed me to go first & see General Pickering. I didn't go directly; I went to first. I reckon I was there a week or two. Then I came back and went to see General Pickering about the charter. I stayed at Albion perhaps one day; then I went down to Grayville.

Mr. MCCLERNARD. Vanduser, Smith & Company?

A. Don't know who the directors of the company were; Governor Casey was one of the members, to my personal knowledge. Then I came back to Albion & saw

170 General Pickering again. The result was, he wouldn't have anything to do with it.

Q. What did Governor Casey say to you?

Mr. GOODWIN. We have Governor Casey's conversation on record.

The COURT. He may state what directions he received—what to do.

A. They told me I might make Governor Pickering an offer of ten thousand dollars for his charter—to form some kind of a consolidation with his charter through Wayne County.

Q. Specify what it was.

A. Including the Albany and M't Carmel. I don't know whether it was a consolidation or what it was, but at that time he had control of the men. Whether he had a consolidation so as to have the legal control, or merely had some of the men under his influence, I don't remember. At least, I was sent there from the Mount Vernon Railroad Company to make a connection.

Q. Governor Casey was president of the company?

A. I understood so at the time. Don't know anything about it. Didn't meet with the board of directors. It was my understanding at the time.

Q. You were to make the purchase if you could?

A. Went to Pickering, and went back afterwards to see Casey and talk the matter over.

What time?

Q. Was that as late as the year '59?

A. I think it was. It was while Vanduser, Smith and Company had charge. Parties came over and employed me, and I continued to act until the making of this deed of trust. I objected to anything of that kind.

No previous connection.

Q. Did you know of any intersection or consolidation between the Mount Vernon Railroad and Belleville and Fairfield?

A. Don't know, of myself. The thing might have been without my knowing it. I afterwards went back aft'r I had been to Albion; may be some weeks, and may be months; it occurs to me, at the term of the court following—probably the court following. We there talked about another plan of getting the charter.

Q. For what purpose?

A. To go on from Mount Vernon.

Q. And all upon the idea that they then had no way?

A. It was understood by all present that there was none.

Q. So, if I understand, Mr. Hanna, it was understood—conceded by the company?

A. I never was present.

The COURT. They talked of getting connection some other way, would leave the inference——

A. Governor Casey and I talked the matter over. I knew Governor Casey better than almost any other man there; he was the only man I understood to be a member of the corporation then. The business was being transacted by Smith and Company. I was under their employ. I really tried and failed. I am not persuaded what year this

171 was. Parties say it was the year '59 I went there. It was while Vanduser, Smith & Co. had charge.

The COURT. Before the execution of these deeds?

A. It must have been before that. When Judge Wilson first showed me these deeds I told him I was opposed, and from that time I had no connection with the business. Employment as attorney ceased, when.

Q. Take any vote in '59?

A. My recollection is it was long before that.

The COURT. Probably mistaken?

A. I may be. The year that work was going on was the time I was over there.

Cross examination by Mr. Scates: Cross-ex.

Q. Before these deeds were made you were employed?

A. Yes; before the deed of trust. When Judge Wilson showed the mortgage and deed of trust, from that time I had no further business there.

Q. Were you present when these contracts were presented, deed of trust and mortgage? Not present when deed presented.

A. I was not.

Q. In the town?

A. Don't know. They were shown to me when they were all drawn up. They were brought down to my room by somebody. My guess would be they were executed at that time.

Q. Assume his debt?

A. I don't know anything about assuming, any further than this connection.

Mr. MCCLERNARD. You were attorney for Vandeuser, Smith & Company?

A. Employed when they first came there, I believe. I drew the contract with Wayne County. From that time I was acting as attorney for them and the Mount Vernon Railroad Company. Contract with Wayne Co.

Mr. BEECHER.

Mr. STUART. I would ask Mr. Beecher whether, on examining the record, there was any vote taken upon an order submitting the subject to a vote of the county? Mr. Beecher.

A. I made very thorough search myself, and had the clerk assist me, but could find—— But one vote by the county.

Q. But one vote of the people?

The COURT. But one vote upon the subject?

A. Yes. There was a meeting of the county court, I think, in September, at which some disposition was made of the lands—some order.

Mr. GOODWIN. We object to this, because the record will show.

A. A special term of court was afterward called, with a view of taking all the lands out of market.

Mr. MCCLERNARD. No, sir; no such order as that.

The COURT. Never but one vote is all you want to give?

Mr. FREEMAN. When did you get this paper; (copy of articles of consolidation between Mt. Carmel and New Al- Articles of consolid., N. A. & Mt. C. and Bellv. & F.

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bany Railroad, and the Belleville and Fairfield Railroad?)

172 A. From the secretary of state's office.

Q. Among the files of the office?

A. Yes, sir; I suppose so. It was given to me there.

The COURT. What is the date?

A. 15th day of March, 1859.

(The reporter was here directed to make a copy of the paper and file it.)

Objection. Mr. MCCLERNARD. Subject to our objection?

Mr. HAY. As to relevancy?

Mr. MCCLERNARD. Yes, sir.

UNITED STATES,

Southern District of Illinois, ss:

Be it remembered that, on the twenty-third day of August, A. D. 1869, personally appeared Samuel J. R. Wilson, of Wayne County, Illinois, before me, a notary public for said county of Wayne, appointed by the governor of the State of Illinois in and for the said county, in the southern district of Illinois, and authorized under the laws of the United States to take affidavits and acknowledgments of bail, etc., to testify, and *in* truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Illinois, wherein John W. Kennicott, Thomas Upham, Eleazer W. Stones, Joseph W. Ward, and Austin Myers are the complainants, and The Board of Supervisors of the County of Wayne and The Mount Vernon Railroad Company are the defendants, on a bill in chancery; and the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Deposition of S. J. R. Wilson.

My name is Samuel J. R. Wilson; my age is fifty-three, and reside in Wayne County, State of Illinois, and have resided there for the last forty years. I was elected judge of the county court of said Wayne County in the month of November, 1857, and acted as such till November, 1861. I was familiar with the transactions of the county court of Wayne County in all that was done in relation to the execution of the mortgage of the swamp-lands of said Wayne County, for securing the bonds of the Mount Vernon Railroad Company. I have examined a certified copy of the order of the county court of said Wayne County, passed on the 14th day of December, 1859, and which I attach hereto as Exhibit "A;" and under the authority of said order, I went to New York, and, by the mutual agreement of myself and Norman A. Smith and Ira Hearsy, who claimed to act for the Mount Vernon Railroad Company, four hundred thousand dollars of the bonds of the said railroad company was transferred from the possession of the said Smith and Hearsy, who took them from a safe in an office having a sign of the Mount Vernon Railroad Company over the door, and transferred to Isaac Seymour, the trustee named in the mortgage; and while I was in New York on the above business, I was shown, but by whom I do not now recollect, the original contract or agreement, a copy of

which I took from it and attach hereto as Exhibit "B," which was taken by me either at Albany or New York City; and the parties present
173 —— Albany were Uriah Jameson, David Newcomb, J. G. Elliott, Austin Myers, and L. D. Crippin, and those present at New York City were S. B. Kendrick, L. D. Crippin, Ira Hearsy, and N. A. Smith. My object in going to Albany was to see the prospect and progress of the Railroad Company in building the said road. While pursuing these inquiries, I was informed by N. A. Smith, or Ira Hearsy, that they had a contract with L. B. Kendrick for railroad iron for this road, and that said Kendrick represented that he had purchased the pig iron to make the rails of said road. I had been to New York on this railroad business in June, 1869.

Question. Look upon the paper now shown you as a copy of an original in the hands of John N. Whitney, of New York City, attorney for Isaac Seymour, trustee in said mortgage, and hereto attached as Exhibit "C," and state if you signed a memoranda at the foot of said exhibit.

Answer. I signed some kind of a paper for Mr. Whiting, certifying the correctness of some bonds—I think between three and five bonds. I went with Thomas M. Scott, one of the associate judges of the Wayne County court, to St. Louis, to assist in negotiating a contract with Vanduzer, Smith and Company, to build a railroad through Wayne County, which was in the winter of 1858-'9, which contract was entered into before the bonds and mortgage above referred to.

Cross-examination by C. A. Beecher, attorney for the defendants:

Acting under the authority of the order of the county court above referred to, I made one trip to New York City, and but one, and while there consented to the transfer of a portion of the railroad bonds from the hands of Smith & Hearsy to Isaac Seymour for safe-keeping, with the understanding that said bonds were placed there for safe-keeping, and not for sale or transfer, and that said bonds were to be delivered to the railroad company only as the work progressed in Wayne County; that afterwards he made other trips to New York City, but not under the order above referred to; that, some time in the early part of 1861, he went there on private business, and while there he thinks he gave one John N. Whitney some kind of a statement concerning some bonds of the Mount Vernon Railroad Company; that, some time in the spring of 1859, Zadoc Casey, A. N. Grant, B. L. Voorhes, & Isaac T. Vanduzer called upon me at my private residence in Fairfield, Illinois, and while there Thomas M. Scott, one of the associate justices of Wayne County, and myself, as county judge, executed the mortgage upon which this suit is instituted; that said mortgage was executed not at a regular or special session of the county court of said county, and that we were not, at the time of executing the same, acting in our official capacity as a county court of said county.

(Objected to by complainants.)

Reëxamined on the part of the plaintiffs by W. B. Scates, attorney:

He thinks that the understanding referred to in the cross-examination was expressed in a receipt given to him by said Seymour, or said receipt may have been given to some one else, and deposited with him, and I do not now know where the receipt is.

S. J. R. WILSON.

UNITED STATES,
Southern District of Illinois, ss:

I, James McCarty, a notary public appointed by the governor of the

State of Illinois, and for the southern district of Illinois, under and by virtue of the acts of Congress, do hereby certify that the reason
174 for taking the foregoing deposition, and the fact is, that the witness is an important one in the cause. I further certify that due notification of the time and place of taking said deposition was made out and served upon the defendant's attorney. I further certify that, on the twenty-third day of August, A. D. 1869, I was attended by Walter B. Scates, of counsel with the said complainant, and by Charles A. Beecher, of counsel with the said defendants, and by the witness, who is of sound mind and lawful age; and the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal this 24th day of August, A. D. 1869.

[L. S.]

JAMES McCARTNEY,
Notary Public for Wayne County,
In the Southern District of Illinois.

Articles of consolidation.

Articles of agreement to join together, unite, consolidate and merge the Belleville & Fairfield Railroad charters & companies with the Alton, Mount Carmel & New Albany Railroad charter & company, February 26, 1859.

Whereas the legislature of the State of Illinois passed an act entitled "An act to continue the charter of the Alton, M't Carmel and New Albany Railroad Company," approved February 7th, 1851, wherein it is specially provided "that the said railroad company shall have power to unite its railroad with any other in this State, or in Indiana:"

And the aforesaid legislature also passed an act entitled "An act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, wherein it is expressly provided that "the said company shall have full power to join and unite its railroad with any other railroad or railroads now or hereafter to be legally chartered:"

And the aforesaid legislature also passed an act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, in which it is expressly provided that the "said company may consolidate or unite with any other road or roads by agreement of the directors or commissioner:"

And the aforesaid legislature also passed an act for a public or general law, entitled "An act to enable railroad companies and plank-road companies to unite, consolidate, and join together upon such terms and conditions as they may respectively agree upon," approved February 28th, A. D. 1854:

And whereas there has heretofore been done a large amount of grading and bridging work upon the line of the Alton, Mount Carmel and New Albany Railroad, by said company, from the town of Mount Carmel, on the west bank of the Great Wabash River, running westward, across the whole width of Wabash County, and continued through the town of

Albion, and across the most expensive part of the line in Edwards County, and partly across the county of Wayne:

175 And also the citizens of Wabash, Edwards, Wayne, and Washington Counties have already made liberal subscriptions for shares of the capital stock of the said Alton, Mount Carmel and New Albany Railroad Company, and the said Alton, Mount Carmel & New Albany Railroad Company have already obtained & procured the right of way for their railroad line, at considerable cost and expense, entirely across the counties of Wabash and Edwards, and also across a large part of Wayne County:

And the line of the Alton, Mount Carmel and New Albany Railroad Company has already been surveyed, levelled, staked out, and located with great care, and at a large expense and cost to said company, by well qualified and competent engineers, all the way from the west bank of the Great Wabash River, at the town of Mount Carmel; and thence entirely and continuously across the whole width of the three counties of Wabash, Edwards, and Wayne, and into the eastern portion of the county of Jefferson, within a few miles of the town of Mount Vernon, passing in its route through the three county towns of Mount Carmel, (3,) Albion, and Fairfield:

Therefore, know all men by these presents that we, the undersigned commissioners named in the aforesaid "act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855; and also named in the aforesaid "act to amend an act to incorporate the Belleville and Fairfield Railroad Company and to change its name," approved February 11th, 1857, for and in consideration of the large sums of money heretofore paid by the aforesaid Alton, Mount Carmel and New Albany Railroad Company, and by them expended for large amounts of grading and bridging work already done on their line of railroad in the three counties of Wabash, Edwards, and Wayne, and the heavy costs by them already paid for obtaining the right of way for their line of railroad, together with the expenses by them already paid for surveying, leveling, staking out, and finally locating nearly sixty miles of their line of railroad, entirely across the said three counties of Wabash, Edwards, and Wayne, together with the consideration that the said railroad company have already procured and obtained the right of way, and large amounts of subscriptions for shares of the capital stock of their railroad company, from the citizens of said counties, as aforesaid: For all of these considerations together, as well as for securing the peace, harmony, prosperity, welfare, and unity of action amongst all the friends of said railroad along the whole line of the Alton, Mount Carmel and New Albany Railroad; and as a measure or means best calculated to insure (4) the success of said railroad line, by more effectually securing the confidence of railroad capitalists, who are relied upon to furnish the necessary amount of money required to finish said railroad, hereby convincing them that there are not two antagonistical or conflicting parties interested in behalf of two separate charters for constructing the same line of railroad; and for the purpose of preventing and removing the continuance of any just cause for any suspicion arising or existing about any opposing or conflicting views or actions, either seemingly or really entertained between the friends of said railroad line, and in order to insure more fully and effectively the still greater certainty of obtaining sufficient money to complete the construction of said line of railroad at the earliest day practicable:

Therefore, we, the commissioners named in the two acts hereinbefore mentioned, hereby agree to unite the Belleville and Fairfield Railroad

charter and the charter contained in the "act to amend the act
176 to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, to and with, and join together and consolidate the same with, the Alton, Mount Carmel and New Albany Railroad Company; and by the act of agreement on our part, we hereby assign, sell, transfer, and convey all and everything of and belonging to and concerning the aforesaid charters of the Belleville and Fairfield Railroad Company, as contained in both the aforesaid acts, dated February 15th, 1855, and February 11th, 1857, together with all the rights, interests, privileges, powers, properties, and fran(5)chises therein contained, and thereunto in anywise belonging, for all the reasons and considerations aforesaid, unto the Alton, Mount Carmel and New Albany Railroad; and all the acts of the legislature respecting the Belleville and Fairfield Railroad as aforesaid are hereby merged into and united with the said Alton, Mount Carmel and New Albany Railroad Company, and hereby transferred to the safekeeping and good management of the president and directors of said last-mentioned railroad company.

As witness our hands and seals, Feb'y 26th, 1859.

HENRY GOLDKING.	[SEAL.]	HIRAM BELL.	[SEAL.]
REES HINCKLEY.	[SEAL.]	D. TURNEY.	[SEAL.]
JOH' MANS.	[SEAL.]	JOHN KEEN, SR.	[SEAL.]
EDWARD TITIERAN.	[SEAL.]	WILLIAM PICKERING.	[SEAL.]
W'M M. PHILLIPS.	[SEAL.]	WILLIAM RUNCIE.	[SEAL.]
A. D. HAY.	[SEAL.]	CHARLES SCHOFIELD.	[SEAL.]
A. WATTS.	[SEAL.]	T. M. CASEY.	[SEAL.]
C. O. B. GOFORTH.	[SEAL.]	DENSEY KENNEDY.	[SEAL.]
JA'S H. BEAL.	[SEAL.]		

RAILROAD OFFICE, ALBION, EDWARDS CO., ILLINOIS,
March 15th, 1859.

At a meeting of the board of directors of the Alton, Mount Carmel and New Albany Railroad Company, held this 15th day of March, 1859, whereat a legal quorum of said board of directors being present, viz: William Pickering, president; William Runcie, Cha's Schofield, George J. Johns, and William Schofield:

When, on motion, it was unanimously

Resolved, That the foregoing agreement, signed and sealed by a majority of the commissioners or directors named and appointed in the act passed by the legislature of the State of Illinois, entitled "An act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, and also signed and sealed by the majority of the commissioners or directors named and appointed in the act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857; the said agreement hereinbefore set forth and signed and sealed by said commissioners or directors to unite, consolidate, and join together the said Belleville and Fairfield Railroad charter, approved February 15th, 1855, together with the amendment thereof, approved February 11, 1857, with and to, and merge the said charters and all their powers, privileges, and franchises into, the Alton, Mount Carmel and New Albany Railroad charter and company, is hereby accepted, confirmed, ratified, and agreed with, by the president and quorum of the board of directors (7) of said last-named railroad company.

And whereas of the said commissioners named and appointed in the acts of the Belleville and Fairfield Railroad charter, approved February 15th,

1855, and the amendment thereof, approved February 11th, 1857,
177 it appears that the late Jno M. Johnson, of Jefferson County, Illinois, died in November, 1856, and the late William Kinney, of St. Clair County, died in October, 1858, and James M. Lucas, late of Washington County, Illinois, sold his dwelling-house, and removed from the State of Illinois in 1858, to become the permanent resident of some other State, therefore he, the said Lucas, no longer has any interest in the construction of said railroad, and could not have an opportunity of signing the foregoing agreement, because of his being a non-resident of this State when said agreement was signed and sealed:

Therefore be it hereby known unto all men that it is (further)—

Resolved, by the president and board of directors of this railroad company that, for all of the foregoing reasons and considerations contained in the agreement hereinbefore set forth as aforesaid, and for the further reason that the majority of the stockholders of the Alton, Mount Carmel and New Albany Railroad Company, having first signed their written agreement and consent to unite, consolidate, and join together the Belleville and Fairfield Railroad charter and company, dated February 15th, 1855, together with its amended charter and company, dated February 11, 1857, with and unto this their railroad company; and that we, whose names are hereunto subscribed as president and directors of this the said Alton, Mount Carmel and (8) New Albany Railroad Company, do hereby consent, concur, and agree with, accept, ratify, and confirm the foregoing agreement, which a majority of the commissioners or directors named and appointed in the "act to incorporate the Belleville and Fairfield Railroad Company," approved February 15th, 1855, and also a majority of the commissioners named and appointed in the act entitled "An act to amend the act to incorporate the Belleville and Fairfield Railroad Company, and to change its name," approved February 11th, 1857, have signed and sealed, in their own proper handwriting, for the sole purpose of uniting, consolidating, and joining together, and by their said agreement they have united, consolidated, and joined together the aforesaid Belleville and Fairfield Railroad charters and companies with and unto the said Alton, Mount Carmel and New Albany Railroad charter and company, and all the powers, rights, privileges, and franchises of the said original Belleville and Fairfield Railroad charter, approved February 15th, 1855, and also of their amended charter, approved February 11th, 1857, are, by said agreement of said commissioners or directors hereinbefore set forth, and by this present acceptance thereof and agreement therewith, are all perfectly and completely merged into and with the said Alton, Mount Carmel and New Albany Railroad charter and company.

In witness whereof we (9) have hereunto set our hands and seals this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM PICKERING, *President.* [SEAL.]
WILLIAM RUNCIE. [SEAL.]
CHARLES SCHOFIELD. [SEAL.]
GEORGE J. JOHNS. [SEAL.]
WILLIAM SCHOFIELD. [SEAL.]
LABAN G. RUSSELL, *Secretary.*

Then afterwards, to wit, on the 28th day of December of the year last aforesaid came the said complainants, by their solicitors, and filed in said clerk's office their bond of appeal herein, which said bond of appeal is in the words and figures following, to wit:

178 *Bond of appeal.*

Know all men by these presents that we, John W. Kennicott, Joseph W. Ward, are held and firmly bound unto the Board of Supervisors of Wayne County, Illinois, and others, in the sum of three thousand ($3,000 00) dollars, to be paid to the said defendants, their successors and assigns, executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of us, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, respectively, dated this 21st day of December, A. D. 1870.

Whereas John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, Austin Meyers, Morris J. Earle, Cyrus Wakefield, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, Joseph Burnett, William L. Rolstom, William P. Emmerson, & William R. Hodges have prosecuted an appeal to the Supreme Court of the United States for the southern district of Illinois, rendered in the case of John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, W'm P. Emmerson, John S. Smith, Henry V. Davis, W'm C. Plunkett, W'm L. Rolston, J. J. Dixwell, Joseph Smith, A. F. Gould, A. H. Ward, John H. Brown, Joseph Burnett, Morris J. Earle, Cyrus Wakefield, Austin Meyers, and W'm R. Hodges, complainants, and the Board of Supervisors of Wayne County, Illinois, and others, defendants :

Now, therefore, the condition of this obligation is such, that if the above named John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, William P. Emmerson, John S. Smith, Henry V. Davis, William C. Plunkett, William L. Rolston, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, John H. Brown, Joseph Burnett, Morris J. Earle, Cyrus Wakefield, Austin Meyers, and William R. Hodges shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise shall remain in full force and virtue.

Signed and sealed in the presence of—

WALTER B. SCATES, for Kennicott.	JNO. W. KENNICOTT.	[L. S.]
C. H. A. WARD, to J. W. & A. H. Ward.	JOSEPH W. WARD.	[L. S.]
	ANDREW H. WARD.	[L. S.]
H. C. BUXTON, to W. R. H.	W. R. HODGES.	[L. S.]
JOSEPH W. WARD, to J. J. D.	J. J. DIXWELL.	[L. S.]
ANDREW H. WARD.	JOSEPH SMITH.	[L. S.]
	EBENEZER W. STONE.	[L. S.]
JOSEPH W. WARD.	JOSEPH BURNETT.	[L. S.]
ANDREW H. WARD.	W. P. EMERSON.	[L. S.]
JOSEPH W. WARD.	JOSEPH S. SMITH.	[L. S.]
JOSEPH W. WARD.	A. F. GOULD, By JAMES GOULD.	[L. S.]
JOSEPH W. WARD.	JOHN L. PRIEST.	[L. S.]
ANDREW H. WARD.	W. C. PLUNKETT,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	HENRY V. DAVIS,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	W'M L. ROLSTON,	[L. S.]
	By JOSEPH W. WARD.	[L. S.]
	D. L. PHILLIPS.	[L. S.]

(Indorsed:) Approved. S. H. TREAT, *Dist. Judge.*

179 (Also indorsed:) Filed December 28th, A. D. 1870. J. A. Jones, clk.

Then, afterwards, to wit, on the second day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-one, the following further procedings were had in said court in said entitled cause and entered of record, to wit:

Order of court.

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, John H. Brown, Cyrus Wakefield, William P. Emmerson, Morris J. Earle, John W. Dixwell, Joseph Smith, J. Seargeant Smith, William R. Rolston, Joseph Burnett, William C. Plunkett, John L. Priest, Henry V. Davis, Arthur F. Gould, and William R. Hodges,
vs.
THE BOARD OF SUPERVISORS OF WAYNE County and the Mount Vernon Railroad Company. } In chancery.

This day again came the parties, by their counsel, and submit this cause to the court, on pleadings and proofs, and the production in evidence of the bonds and interest warrants described in this bill of complaint. The court having heard the same and the argument of counsel thereon, and being now sufficiently advised in the premises, it is ordered and decreed by the court that the complainants' bill be dismissed with costs, on the ground that the proofs failed to show that, at the date of the mortgage and deed of trust in question, there was any line of railroad constructed, or authorized to be constructed, through Wayne County, with which the Mt. Vernon Railroad was joined, connected, or intersected. And thereupon the complainants pray an appeal to the Supreme Court, which is allowed on one or more of them entering into bond, to the defendants, in the penalty of three thousand dollars, with one or more sureties to be approved by the court, and conditioned as the law directs; and they having perfected their appeal by the production of a bond, approved by the court, it is, therefore, ordered by the court that the clerk of this court certify the record of the proceedings in this cause into the Supreme Court of the United States.

And it is further ordered by the court that the injunction heretofore ordered in this cause continue in force during the pendency of the appeal, and until the further order of this court.

It is, therefore, ordered and decreed that the defendants receive of the complainants the costs and charges by them about their defence in this behalf expended, and that execution issue therefor as in judgements at law.

Stipulation No. 1.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE CO. AND The Mt. Vernon R. R. Co. } In chancery.

It is hereby stipulated and agreed by and between the under-

180 signed, counsel for the said complainants and for the Board of Supervisors of Wayne County, that the foregoing transcript contains all that is necessary for the proper determination of this case, and that the same may be taken and considered by the Supreme Court of the United States, for the purposes of this appeal, as a full and complete transcript of the record and proceedings in this case.

It is further agreed that the counsel for said supervisors did, on the hearing of this cause, object to each and every item of testimony offered and introduced in evidence by said complainants at the time the same were respectively offered, and it is to be considered for the purposes of this appeal that such objections were entered of record at the time they were made, and this stipulation as to objections to testimony is reciprocal with both parties.

Springfield, Ill., March 30, 1871.

WALTER B. SCATES.
McCLERNAND & BROADWELL,
Sol's for Complainants.
STUART, EDWARDS & BROWN,
Of Counsel for Wayne Co.
N. L. FREEMAN,
Of Counsel for Wayne County.

(Indorsed:) 2233. Jno. W. Kennicott et als. vs. Board of Supervisors of Wayne Co. et als. Filed March 30, A. D. 1871. J. A. Jones, clk.

Stipulation No. 2.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, et al. } In chancery.

We, the undersigned, attorneys for both complainants and defendants in above-entitled cause now pending on appeal from the circuit court of the United States within and for the southern district of Illinois, to the Supreme Court of the United States, being desirous to obtain a hearing and decision of said cause in said last-mentioned court at the earliest practicable and convenient period, do hereby agree that the record of this cause for the Supreme Court aforesaid may be filed in said court at any time within five months from this date hereof, and that, upon such filing of said record, the said cause and appeal shall be taken and treated as if filed in time, under the rules of said Supreme Court, to entitle the same to a hearing at the present term of said court.

January 6th, 1871.

McCLERNAND & BROADWELL,
Sol's for W. R. Hodges.
KNAPP AND FREEMAN,
Att'ys for County of Wayne.
WALTER B. SCATES,
For Complainants.
G. A. GOODWIN,
For Comp'ts & Appellants.

(Indorsed:) John W. Kennicott et al. vs. Wayne County, &c. Agreement.

181 Circuit court of the United States, southern district of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify that the foregoing six hundred and ten pages contain a full, true, and complete transcript of all the papers, pleadings, and evidence filed and proceedings had in said entitled cause of John W. Kennicott et al. vs. The Board of Supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Company, as required by the foregoing stipulation to said transcript attached, and as truly, fully, and completely as the said papers, pleadings, and proceedings under such stipulation appear of record in my said office.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court at Springfield, in said district, this thirtieth day of March, in the year of our Lord one thousand eight hundred & seventy, & of our Independence the 95th.

[SEAL.] J. A. JONES, *Clk.*

[5-ct. int. rev. stamp, canceled.]

Fee for transcript, $190.50 paid.
Volney Hickox fee, $59.50.

(Indorsement on cover:) No. 537. John W. Kennicott, J. W. Ward, E. W. Stone, A. Meyers, M. J. Earle, C. Wakefield, J. S. Smith, H. V. Davis, J. L. Priest, W. C. Plunkett, J. J. Dixwell, J. Smith, A. F. Gould, A. H. Ward, J. Burnett, W. L. Rolstom, W. P. Emmerson, and W. R. Hodges, appellants, vs. The Board of Supervisors of Wayne County, impleaded with the Mount Vernon Railroad Company. S. Illinois C. C. U. S. Filed 25th April, 1871.

182 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge, and the Hon. Samuel H. Treat, district judge, on Thursday, the twenty-fifth day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

J. A. JONES, *Clerk.*

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone; Catherine Earl, and Abraham Riker, executors of Morris J. Earl, deceased; Francis E. Parker, William B. Bacon, administrators, and Eliza A. Wakefield, administratrix of Cyrus Wakefield, deceased; J. Sargent Smith, Thomas Upham; Maria Myers, administratrix of Austin Myers, deceased; Thomas Upham, executor of John W. Emerson, deceased; John H. Brown,
183 Henry B. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Ralston,

vs.

THE BOARD OF SUPERVISORS OF WAYNE County, impleaded with the Mount Vernon Railroad Company. } In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the third day of July, in

the year of our Lord one thousand eight hundred and seventy-three, came said complainants, by their solicitors, and filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, a mandate of the United States in said cause, which said mandate and the order of said circuit court thereon are in the words and figures following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of Illinois, greeting:

[L. S.]

184 Whereas lately in the circuit court of the United States for the southern district of Illinois, before you, or some of you, in a cause between John W. Kennicott, Joseph W. Ward, Ebenezer W. Stone, Austin Meyers, Morris J. Earle, Cyrus Wakefield, John S. Smith, Henry V. Davis, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Andrew H. Ward, Joseph Burnett, William L. Rolston, William P. Emmerson, and William R. Hodges, complainants, and the board of supervisors of Wayne County and the Mount Vernon Railroad Company, defendants, wherein the decree of the said circuit court entered in said cause on the 2nd day of January, A. D. 1871, is in the following words, viz:

"It is ordered and decreed by the court that the complainant's bill be dismissed with costs, on the ground that the proofs failed to show that at the date of the mortgage and deed of trust in question there was any line of railroad constructed or authorized to be constructed through Wayne County with which the Mount Vernon Railroad was joined, connected, or intersected.

And thereupon the complainants pray an appeal to the Supreme
185 Court, which is allowed on one or more of them entering into bond to the defendants in the penalty of three thousand dollars, with one or more sureties to be approved by the court, and conditioned as the law directs; and they having perfected their appeal by the production of a bond approved by the court, it is therefore ordered by the court that the clerk of this court certify the record of the proceedings in this cause into the Supreme Court of the United States.

And it is further ordered by the court that the injunction heretofore ordered in this cause continue in force during the pendency of the appeal and until the further order of this court.

It is therefore ordered and decreed that the defendants receive of the complainants the costs and charges by them about their defence in this behalf expended, and that execution issue therefor as in judgments at law," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears: and whereas
186 at the December term, 1871, of the said Supreme Court the death of William P. Emmerson, one of the appellants, having been suggested, it was ordered by the court that the appearance of Thos. Upham, executor of the said Wm. P. Emmerson, dec'd, be entered as one of the appellants in this cause;

And whereas at the present term of December, A. D. 1872, the death

of Austin Meyers, one of the app'ts, having been suggested, it was ordered by the court, on the motion of Mr. W. B. Scates, that the appearance of Maria J. Meyers, administratrix of Austin Meyers, dec'd, be entered as one of the appellants in this cause;

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and seventy-two, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel: on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said complainants John W. Kennicott et al. recover against the said defendants three hundred and
187 twenty-two dollars and twenty-two cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to award a new trial.

3D MARCH, 1873.

You therefore are hereby commanded that such execution & further proceedings be had in said cause in conformity to the opinion & decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-two.

Costs of complainants: Clerk, $302.22; attorney, $20.00—$322.22. Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Indorsed:) Filed July 2nd, A. D. 1873. J. A. Jones, clk.

188 *Order on filing mandate.*

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al. } In chancery.

This day come the complainants and file mandate from Supreme Court of the United States for a new trial herein; and now, by consent, the defendants' testimony is to be closed by the 1st of December next, and cause to be heard at next January term of this court upon the payment of all complainants' cost legally taxable, on or before the 1st day of December next.

Afterwards, to wit, on said second day of July of the year aforesaid, came said complainants and filed in the clerk's office of said court their written motion for order for execution against defendant for costs, which said written motion is in the words and figures following, to wit:

Written motion for execution.

In the circuit court of the United States of America within & for the southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County et al. } Motion.

189 The complainants herein move the court for an order herein to the clerk of this court to issue execution against the defendants for all costs taxed or legally taxable herein.

SCATES, McCLERNAND & GOODWIN,
For Complts.

(Indorsed:) Filed July 2nd, 1873. J. A. Jones, clk.

Now, afterwards, to wit, on said second day of July, of the year aforesaid, came said defendant, by its solicitors, and filed in the clerk's office of said court the written motion and affidavits in support thereof of S. J. R. Wilson, R. T. Forth, and D. L. McCauley, which said written motion and affidavits are in the words and figures following, to wit:

Written motion of Wilson, Forth, & McCauley.

In the circuit court of the United States, southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE Co., Ills., et al. } In chancery.

190 Now, on the second day of July, A. D. 1873, being one of the days of the present term of the said court, comes Samuel J. R. Wilson, Robert T. Forth, and Daniel L. McCauley, by Freeman & Robinson, Knapp & Shutt, their solicitors, & show to the court here that they are each materially interested in the subject-matter of this suit, as shown by their respective affidavits here presented; & thereupon they pray that they may be made parties defendant to said suit, & they have leave to file their answer herein and cross-bill, if they shall be so advised by their counsel is necessary to their defence, by some day to be appointed for that purpose; &, as in duty bound, they will ever pray, &c.

SAML. J. R. WILSON,
ROBERT T. FORTH,
DANL. L. McCAULEY,
Petitioners.

ROBINSON, KNAPP & SHUTT,
N. L. FREEMAN,
Solcrs. for Ptnrs.

(Indorsed:) Filed July 2, 1873. J. A. Jones, clk.

191 *Affidavit No. 1 of S. J. R. Wilson.*

Ct. court United States, so. dist. Ills. June term, A. D. 1873.

BOARD OF SUPERVISORS OF WAYNE COUNTY
ats.
JOHN W. KENNICOTT & OTHERS.

Samuel J. R. Wilson, being first duly sworn, states on oath, in reference to the subject-matter of the above-entitled cause, now pending in the circuit court of the United States for the southern district of Illinois, that his attention has been called to that part of the opinion of the Supreme Court of the United States delivered upon the reversal of the decree of this court in this case, in which it is stated that "Van Duser & Smith entered into a contract with Wayne County for building that part of the road of the Belleville & Fairfield Company, lying between the east line of Wayne County and Mt. Vernon, thus running across the entire width of Wane County." "This contract, the opinion further states, " was assigned to the Mt. Vernon Railroad Company, who undertook the construction of this portion of the road." This affiant understands the contract so referred to by the Supreme Court to
192 be the same which is found in the printed record in this case, on pages 46, 47, 48, 49, & 50 thereof, and he states that he is the same Samuel J. R. Wilson whose name appears in said contract; that at the time of making said contract he was county judge of Wayne County, and was personally cognizant of the facts and circumstances connected with the making of the same, and the subsequent action had under it; and this affiant states explicitly that the Belleville & Fairfield Railroad Company was not only not a party to that contract in form, as this court will see by reference thereto, but affiant states that, at the making of said contract, or prior thereto, there was no understanding or arrangement with the Belleville & Fairfield Railroad Company in relation to the subject-matter of said contract so as to authorize the building under the same of any part "of the road of the Belleville & Fairfield Company," as stated in said opinion. This affiant further states that at no time subsequent to the making of said contract, up to the 26th day of February, 1859, was there any arrangement, understanding, or agreement with the Belleville & Fairfield Railroad Company by which any part of the road of said com-
193 pany was authorized to be constructed under said contract. On the 26th day of February, 1859, the court will see by reference to pages 174, 175, 176, & 177 of the said printed record, there were certain articles of agreement "to join together, unite, consolidate, and merge the Belleville & Fairfield Railroad charter & companies with the Alton, Mt. Carmel & New Albany Railroad charter and company," by and through which said articles of agreement this affiant is advised and believes the Belleville & Fairfield Railroad Company lost its existence as a separate corporation and became merged in the Alton, Mt. Carmel & New Albany Railroad Company. This affiant states that there never was such a state of facts as would authorize any person to build any part of the road of the Belleville & Fairfield Company under or by virtue of the aforesaid contract designated as the Van Duzer and Smith contract. Affiant states that at the time that contract was made it was the plain understanding between all the parties to it that they then had no arrangement with any chartered company by means of which a road could be constructed under that contract for any incorporated

company whatever; but it was the hope and expectation of those
194 parties that some arrangement would be consummated by which a railroad could be constructed under that contract under the authority of some charter; but, as this affiant will presently show, there never was any such arrangement made.

It appears upon page 51 of said printed record that the said Van Duzer & Smith contract was assigned to the Mt. Vernon Railroad Company on the 12th Sept., 1859, (erroneously printed 1839.) In November following, affiant was elected one of the directors of the Mt. Vernon Railroad Company. He states that, during the time of his directorship, he was an active participant in the business of the company, and from his repeated interviews with those managing the affairs of the company he had an opportunity to know what transpired in reference thereto. And affiant states that while he was such director he knows that the president and directors of the Mt. Vernon Railroad Company understood that they did not have any arrangement by which they could get
195 a connection with any railroad eastward from Mt. Vernon; and in that view efforts were made to procure the desired connection with roads in contemplation, the charters for which were then under the control of General Pickering. Affiant refers to his testimony on the former hearing of this case, to be found on pages 154 to 169 of the printed record, in explanation of the negotiations with General Pickering; and he states that those negotiations were undertaken and prosecuted with the knowledge and understanding that Gen. Pickering had the control of the Alton, Mt. Carmel & New Albany Company, into which it was then understood, by those acting in behalf of the Mt. Vernon Company, the Belleville & Fairfield Company had previously been merged. Those negotiations with Pickering failed; and affiant states that none of the parties to said Van Duzer & Smith contract, nor the Mt. Vernon Railroad Company by virtue of the said assignment thereof to them, ever had any authority under said contract to construct any part of the road of the Belleville & Fairfield Company. In regard to work done under said Van Duzer & Smith contract, affiant states
196 that, prior to the assignment thereof to the Mt. Vernon Railroad Company, Van Duzer, Smith & Co. did do a little work; but it consisted merely in the digging of a ditch about 100 yards long in Wayne County, and clearing off the timber for less than one mile. This was all the work done under said contract, so far as affiant knows; and his opportunity for knowing what was done was such that it was hardly possible that any work could have been done without his knowledge; subsequent to the assignment of that contract to the Mt. Vernon Railroad Company, no work was done under it, so far as he has any knowledge. The assignment was in September. Affiant was elected director of the Mt. Vernon Company in November following. The Mt. Vernon company did not, while affiant was such director, do any work under said contract; and if any had been done between the time of the assignment and the time affiant became such director, he believes it certainly would have come to his knowledge. This affiant states that he does not believe that any of the bonds of the Mount Vernon Railroad Company,
197 which are represented in this suit, were acquired under such circumstances as will protect the holders thereof as bona-fide holders for value. He will state such facts as are within his knowledge as the basis of such belief. Affiant states, first, that while he was in New York City, at the times mentioned in his testimony in the printed record, in connection with the matters out of which this suit has arisen, he was witness of many attempts to negotiate those bonds; and learned from

business men there that the bonds were looked upon by capitalists with suspicion. Affiant was told by Charles Lewis, the then treasurer of the Mt. Vernon Company, and Dorrence Davis, that said Davis had traded some of those bonds for a lot of dry-goods, and was afterwards arrested on the alleged ground that the bonds were a cheat; and that Davis got out of the difficulty by returning the goods. This was told to affiant in New York City soon after the affair was represented to have occurred. Said Davis was at that time in the office of the Mt. Vernon Company in New York acting under said Lewis.

198 Affiant was present on an occasion when Norman A. Smith undertook to negotiate some of those bonds to one Courtlandt Palmer, then a wholesale hardware merchant in New York, and said Palmer declined to have anything to do with them, because, as he said, he was afraid of them. Affiant never understood that said bonds ever had any market-value anywhere, such as would induce capitalists to take them as an investment.

In relation to William R. Hodges, who is a party to this suit, claiming to be the holder of certain bonds, this affiant states that it is not true, as stated by said Hodges, that affiant ever negotiated with him in regard to the purchase of said bonds. One very good reason why affiant would not have done so was that at the time the efforts were being made in New York to raise money on those bonds the said Hodges represented to affiant by business men in New York to be a broken merchant who had no money to make investments with; affiant states that he was informed and believes such was the fact, and therefore affiant

199 says he does not believe said Hodges is a bona-fide holder for value of the bonds he pretends to own.

In reference to A. Myers, also a party to this suit, and claiming to be the holder of a considerable amount of said bonds, affiant states that in a conversation between himself, said Myers, Ira Hersey, and Norman A. Smith, in Albany, New York, it was stated that a large amount of said bonds had been or were to be put in the hands of said Myers by said Smith as treasurer of the Mt. Vernon Company, in order that said Myers might try to negotiate them for iron for the Mt. Vernon road. What precise amount of bonds was thus put in said Myers' hands or to be put in his hands affiant does not know, but affiant never had any knowledge that said Myers ever returned those bonds to the company or in any manner accounted for them; and affiant believes the bonds now claimed in this suit as belonging to said Myers are the same bonds intrusted to him to negotiate as the agent of the Mt. Vernon Company, and that said Myers never paid anything for them; said Myers was one of the board of directors of the Mt. Vernon

200 Railroad Company at the time the bonds were placed in his hands to negotiate as above stated. Affiant further states that he continued to act as a director of the Mt. Vernon Railroad Company from the time he was chosen a member of said board as long as the organization of the said company was kept up, & that during all said time no negotiation of said bonds was ever made for the purpose of the company, so far as he was advised, & that no report of any such negotiation was ever made by any one to said company; that if any of said bonds had been negotiated affiant believes that, as a director of said company, he would have known of such negotiation. He further says that no part of the proceeds of said bonds were ever received by said county of Wayne nor by any person for said county, nor ever applied to the building of said road in Wayne County; all which affiant states can be

shown by said county, if time is given for that purpose, in a rehearing of this cause; & further says not.

S. J. R. WILSON.

201 Subscribed and sworn to before me this 30th day of June, A. D. 1873.

J. A. JONES, *Clerk.*

(Indorsed:) Filed July 2, 1873. J. A. Jones, clk.

Affidavit No. 2, of S. J. R. Wilson.

In the circuit court of the United States, southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Ills. } In chancery.

Samuel J. R. Wilson, being duly sworn, on oath says that he is a citizen of the State of Illinois, residing in the southern district thereof; that, subsequent to the execution of the mortgage or deed of trust & which is in suit in the above-entitled cause, but previous to the commencement of the said suit, he purchased of the county of Wayne a portion of the lands in the said mortgage or deed of trust conveyed, & received a deed therefor; that the said purchase was made for a
202 valuable consideration by him paid therefor to the said county of Wayne, & embraced in all about three hundred & sixty acres of said land, and of part of which he is still the owner seized in fee, & has sold & conveyed the residue with warranty of title; that said lands so purchased by him as aforesaid at the time he purchased the same were of but little value comparatively, but by the advance in the value of land generally since, the said lands so purchased have greatly increased in value; that he is advised by his counsel & and so believes that, owing to the nature of the conveyance made to him by said county of said lands, that it is doubtful whether said county would be liable to him for the purchase-money paid for said land, if the title thereto should fail by reason of a decree of foreclosure in this suit, and that if so liable, the sum he could recover of said county would only be trifling in comparison with the real value of said lands at this time; that if he is allowed to come in & defend in the said suit, he believes that he can protect his rights & interests in the premises, & in no other way can they be protected, and that otherwise very great injustice will be
203 done him; that, upon being allowed to come in & defend in this cause, and reasonable time given him for that purpose, he believes he can show by testimony that no connection was ever made as stated in the bill of complainants herein of the various railroads in said bill mentioned whereby authority was given to the county of Wayne to execute said mortgage or deed of trust, and that under the facts in this case it can be shown & proved that the said county of Wayne had no power or authority to make & execute said mortgage or deed of trust; & further he says not.

S. J. R. WILSON.

Subscribed and sworn to before me this 30th day of June, A. D. 1873.

J. A. JONES, *Clerk.*

(Indorsed:) Filed July 2, 1873. J. A. Jones, clk.

204 *Affidavit No. 1 of R. T. Forth.*

In the circuit court of the United States, southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE Co., Illinois. } In chancery.

Robert T. Forth, being duly sworn, on oath says that he is a citizen of the State of Illinois, residing in the southern district thereof; that, subsequent to the execution of the mortgage or deed of trust which is in suit in the above-entitled cause, but previous to the commencement of said suit, he purchased of the county of Wayne, & paid therefor a valuable consideration, a portion of the lands in said mortgage or deed of trust conveyed, & received a deed therefor; said purchase embraced in all about three hundred acres, part of which he entered upon & made improvements thereon, & since which time he has sold & conveyed the said lands with covenants of warranty of title therein; that, by reason of said improvements, & the advance in value of lands generally in said county since he purchased the same of the said county, he sold
205 the said lands for a much greater sum of money than he paid therefor, and, should a decree of foreclosure be made in this cause, affiant will be compelled to defend the title to the lands he so conveyed, & will have no adequate recourse on the county of Wayne, if he has any at all, and which he is advised by his counsel is doubtful; that if he is allowed to come in & defend in this suit he believes that he can protect his rights & interests in the premises, & in no other way can they be protected, and that otherwise very great injury & injustice will be done him; that, upon being allowed to come in & defend in this cause, and reasonable time given him for that purpose, he believes he can show by testimony that no connection was ever made as set forth in complainants' bill herein of the various railroads in said bill mentioned, whereby the said county of Wayne obtained any authority to execute said mortgage or deed of trust, and that without such connection being proved, he is advised by his counsel & believes that the county of Wayne had no power or authority to make & execute said mortgage or deed of trust; & further says not.

206 R. T. FORTH.

Subscribed and sworn to before me this 30th day of June, A. D. 1873.

J. A. JONES, *Clerk.*

(Indorsed:) Filed July 2, 1873. J. A Jones, clk.

Affidavit No. 2 of R. T. Forth.

In the circuit court of the United States, southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois. } In chancery.

Robert T. Forth, of Wayne County, in said State, being duly sworn,

on oath says that at this time he is acting by employment of the board of supervisors of said county of Wayne as their agent in and about the defence of the above-entitled suit; that it is a fact that said county of Wayne has long since parted with all title & interest in the lands described in the mortgage & deed of trust as in complain-
207 ant's bill, and that at this time said county has no title to said lands; that, since the execution of said mortgage or trust-deed, but prior to the commencement of this suit, said county sold & conveyed, for a valuable consideration to them paid, about sixty thousand acres of said land to various parties, many of whom have gone on said lands & made improvements thereon, such as erecting buildings & other houses, making fences, clearing up, breaking & fencing said lands, whereby & by reason also of an advance generally in the value of lands in said county the said lands so sold & conveyed have very greatly appreciated in value; that when sold by said county, in consequence of the wet character of the same & other things, none of said lands brought over one dollar per acre, & many acres were sold for fifty & seventy-five cents per acre; that said lands so sold and improved are now occupied & in the actual possession of the persons owning the same, and if a decree of foreclosure is had in this case, said parties will have no adequate recourse on said county for the loss of their title to said lands; that all said parties have very material & valu-
208 able interests in the subject-matter of this suit, & none of whom are parties to said suit, or have had an opportunity to be heard in this cause; that if opportunity is given them, in the belief of affiant, many of the said persons would come in voluntarily & defend their rights & interests in this suit. Affiant is informed & believes, and so charges the fact to be, that if allowed, & reasonable time given for that purpose, the parties interested herein can show & prove that no connection of any kind was ever made by the Belleville & Fairfield Railroad Company with the Mt. Vernon Railroad Company, and that no work was ever done in the county of Wayne by the Belleville & Fairfield Railroad Company, or by any person or persons for them, nor was there any work ever done in said county by the Mt. Vernon Railroad Company; that all the work ever done in said county, in the matter of building either of the said railroads, and which was of a very trifling character & amount, was done by Van Duzer, Smith & Co., and was so done without any charter or under & in pursuance of any
209 act of incorporation whatever or any authority derived therefrom.

Affiant is informed & believes that the county of Wayne can show that none of said bonds were ever sold for the benefit of said county, or that any part of the proceeds of said bonds were ever received by said county, or was ever applied to the building of said railroad through said county; & further says not; that it will take some time to prepare the testimony mentioned in this & the affidavit made by others in this case; that the same cannot be obtained & presented at the present term of this court.

R. T. FORTH.

Subscribed and sworn to before me this 30th day of June, A. D. 1873.
J. A. JONES, *Clerk.*

(Indorsed:) Filed July 2d, 1873. J. A. Jones, clk.

210 *Affidavit of D. L. McCauley.*

In the circuit court of the United States, southern district of Illinois, June term, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illlinois. } In chancery.

Daniel L. McCauley, being duly sworn, on oath says that he is a citizen of the State of Illinois and residing in the southern district thereof; that, during the years 1863 and 1864 and subsequent to the execution of the mortgage or deed of trust now in suit in the above-entitled cause, but previous to the commencement of said suit, he purchased of the county of Wayne about eight thousand acres of the land embraced in said mortgage or deed of trust & received from said county a deed therefor; that he took said land of said county in part payment for an iron bridge built for said county by affiant; that since said purchase by affiant he has sold & conveyed all of said land except one hun-
211 dred & sixty acres, which he still owns, & in all cases affiant in making such sales has given warranty deeds with covenants of title therein, & if the decree of foreclosure prayed for is made in said suit he will be liable on said covenants; and that he is informed by his counsel that it is doubtful whether he has any recourse on the county of Wayne for the amount he paid for said lands, and that even should he have, it would be for a much less amount than he is liable for on his covenants aforesaid; that if he is allowed to come in & defend in this suit he believes that he can protect his rights & interests in the premises, & in no other way can they be protected, & that otherwise very great injury & injustice will be done him; that upon being allowed to come in & defend in this cause, and reasonable time given him for that purpose, he is informed, and believes that it can be shown by testimony, that under the facts in this cause, said county of Wayne, at the time the said mortgage or deed of trust was executed, had no power or author-
212 ity to execute the same; that he cannot, at this time and place, give a particular description of the lands so conveyed to him, as his papers are at his home, in the county of Clay, in said State. He further says that he had always been informed & believed that said county had no power to execute the said mortgage, & not having been made a party to this suit he has heretofore taken no steps to defend said suit, but desires now so to do, as prayed for in the petition by him presented; & further says not.

D. L. McCAULEY.

Subscribed & sworn to before me this 30th day of June, 1873.
J. A. JONES, *Clerk.*

(Indorsed:) Filed July 2, 1873. J. A. Jones, clk.

Now, afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and seventy-three, the following further proceedings were had in said court in said cause and
213 entered of record, to wit:

Order appointing examiners.

JOHN W. KENNICOTT AND OTHERS
vs.
THE BOARD OF SUPERVISORS OF WAYNE County. } In chancery.

On motion of defendants, Henry Freese, of McGregor, Iowa, John Keene, of Fairfield, Illinois, and R. A. D. Wilbanks, Mt. Vernon, Illinois, are appointed examiners, before whom testify may be taken in this cause now pending in this court.

Afterwards, to wit, on the twelfth day of said December, of the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order to open depositions.

JOHN W. KENNICOTT AND OTHERS
vs.
THE BOARD OF SUPERVISORS OF WAYNE County. } In chancery.

It is ordered that all depositions filed in this cause subsequent to the October term of this court may be opened at any time on the application of either party.

Afterwards, to wit, on the thirteenth day of February, in the year of our Lord one thousand eight hundred and seventy-four, came said defendant and filed in the clerk's office of said court the joint
214 affidavit of A. L. Knapp and N. L. Freeman; which said joint affidavit is in the words and figures following, to wit:

Joint affidavit of A. L. Knapp and N. L. Freeman.

In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, Ill., impl., &c.

Anthony L. Knapp and Norman L. Freeman, who are of counsel for the defendants in the above-entitled cause, state upon their oaths that soon after the adjournment of the last regular term of this court they determined that an investigation ought to be made of the facts and circumstances connected with the pretended issue and sale of the bonds in question in this suit, and that to secure that and some person who would have the necessary acquaintance and facilities in the city of New York should be employed to obtain the information desired, it being understood that the said bonds had been acquired in that city. In furtherance of this view James C. Robinson, who is also of counsel for
215 said defendants, and said Freeman, visited Wayne County and laid before the said board of supervisors the subject, and the said board thereupon made an appropriation to pay the expenses of such proposed investigation.

These affiants would here state that the reason which induced a desire for an inquiry into the circumstances of the pretended negotiation and sale of said bonds, was that they felt satisfied from some facts which had come to their knowledge, and from the general character of the whole transaction, that said bonds, if purchased at all, by those who now assume to hold them, were purchased at such a small proportion of their nominal value as to induce the suspicion that they were not purchased in good faith, in that sense which the law requires in order to afford protection to such holders as bona-fide purchasers for value.

These affiants, in pursuance of this plan of action, employed H. Tompkins, esq., to proceed to make the necessary investigation in the city of New York, affiants being informed that said Tompkins possessed
216 an acquaintance in that city and with the general subject, such as would greatly facilitate the inquiry proposed. Affiants state that they are informed that said Tompkins at once entered upon the inquiry suggested and has reported to affiants many facts which they regard of value in the defence of this suit. Said Tompkins has informed affiants that it can be proven by persons residing in the city of New York, that at the time the bonds involved in this suit were pretended to have been negotiated and purchased in that city, or elsewhere, they had no market-value in the city of New York; that dealers in securities did not regard them as a desirable investment; that they were rejected from the usual places where reliable securities were sold; that it can be shown that a portion of the bonds disposed of by the agents of the Mt. Vernon Railroad Company were given in exchange for real estate and in payment of debts, under circumstances which ought to notify those who took the bonds that the disposition of them was not in accord with the purpose for which the bonds were made, as shown upon their face.
217 Affiants further state that said Tompkins also informed them that he had learned, from what seemed to him a reliable source, that a very large amount of the bonds embraced in the $800,000 alleged to have been issued by the Mt. Vernon Railroad Company had been stolen from one Lewis, who was at that time the treasurer of said company. In the resent conference between affiants and said Tompkins, the latter alluded to many other facts bearing upon the subject, but which affiants cannot state with accuracy, as they expected to get said Tompkins' affidavit, in which he would state the matters in detail.

As an explanation of the reason why affiants did not secure the affidavit of said Tompkins, upon which they designed to base a motion for a continuance of this cause before the present time, affiants state that said Tompkins was in this city on Tuesday last and then only for a few hours, and stated that he was obliged to go to the State of Kansas on important business, but would return in three days. The uncer-
218 tainty of the time of the arrival of his honor, Judge Drummond, suggested to affiants that probably that would be insufficient time to answer the requirements of the court, and while said Tompkins was here it was not practicable for them, in the exercise of reasonable diligence, to prepare the proper affidavit. Affiants state the main body of the important facts developed by *by* the investigation of said Tompkins was not known to them in time to secure the testimony desired under the order of this court at its last regular term, which was that the testimony of the defendants should be closed by the 1st of December last.

Affiants now ask that this cause may be postponed until Tuesday next, when, if they do not present satisfactory grounds for a continuance,

they will go to trial. This application is made in order that justice may be done and not for the mere purpose of delay.

A. L. KNAPP.
N. L. FREEMAN.

Subscribed & sworn to before me this 13th day of February, A. D. 1874.

J. A. JONES, *Clerk.*

219 (Indorsed:) Filed Feby. 13, A. D. 1874. J. A. Jones, clk.

Afterwards, to wit, on the sixteenth day of February, in the January term of said court of the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order making new parties.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } Chancery.

This day came the complainants, by Messrs. Goodwin, Scates and McClernand, their solicitors, and suggest the death of Morris J. Earl, and, on their motion, Catharine Earl and Abraham Riker, his executors, are made parties complainant. On further motion of complainants the death of Cyrus Wakefield is suggested, and Francis E. Parker & William B. Bacon, administrators, and Eliza A. Wakefield, administratrix, are made parties complainant. On motion of defendant leave is
220 granted to withdraw deposition of Alfred W. Beasly and David M. Johnson.

Then afterwards, to wit, on said sixteenth day of February, of the year last aforesaid, came again said defendant, and filed in said clerk's office the affidavit of Howland Tompkins, which said affidavit is in the words and figures following, to wit:

Affidavit of H. Tompkins.

In the circuit court of the United States, southern district of Illinois, January term, A. D. 1874.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois. } In chancery.

Howland Tompkins, being duly sworn, on oath says that he is a practicing attorney in the city of New York, having his office at No. 17 Nassau street in said city; that for several years past he has been particularly engaged in cases involving municipal obligations, & is acquainted personally with a large number of men doing business in said city of New York as brokers, & who are and for many
221 years past have been dealing in municipal & other corporate obligations; that affiant, on or about the 26th day of October last, was employed on the part of the defendants, at the instance of N. L. Freeman & A. L. Knapp, solicitors for said defendants, to make a thorough examination, in the city of New York, in the first place into all the facts & circumstances attending the negotiation & issue of the

bonds of the Mt. Vernon Railroad Company, & which are had in suit in this case, with instructions from said solicitors to hunt up the personal representatives of Isaac Seymour, deceased, who was the trustee in the deed of trust or mortgage now in suit, with the view, if possible, of ascertaining whether any books or papers of said Seymour could be found connected with or relating to said trust; and further, to ascertain by enquiring among brokers in said city if the facts could be ascertained of the negotiations & issue of said bonds, & generally everything connected therewith; & further, to find, if possible, Charles W.
222 Lewis, who, in the year 1860 or 1861, was the treasurer of the said railroad company, with the intention on the part of defendants to take the deposition of said Lewis, to be used herein. That, in pursuance of said employment & instructions, affiant went to work in the city of New York, & soon found that from the lapse of time since said bond had been negotiated that it was very difficult to get any trace of said bonds, or any one connected with them; that he found after much search one Thos. R. Nelson, who had been the attorney of said Seymour, & learned from him that the administrator of the estate of said Seymour had removed from said city, & he could not learn where he could be found; that said Nelson informed him that one John N. Whiting, esq., who, affiant states, is a lawyer of eminence & high character in said city, had been in some manner connected with said Seymour in the matter of said trust. That he called on Mr. Whiting, & who informed affiant that he knew Mr. Seymour very well, & also knew Mr. Lewis, the treasurer of said
223 railroad company; that he, said Whiting, had drawn both the mortgage & deed of trust & bonds now in suit, & was perfectly familiar with all the facts attending the preparations & first attempts to negotiate said bonds; that said Whiting did not know Lewis until at or about the *the* time he prepared said mortgage & deed of trust; he informed affiant that he soon discovered that said Lewis was a mere adventurer, without means or business character; that said bonds never in New York had any market-value; that he, said Whiting, was to have been paid one thousand dollars for his services in preparing said papers by said railroad company, & that he never could get that from said company, & finally took one of said bonds for $1,000, as the only compensation he could get for his services, & which bond he has yet, never having been able to dispose of it. That said Lewis once furnished said Whiting with a statement of what he, said Lewis, called the recognized bonds of
224 said company, & a copy of which statement affiant says is found on page 94 of the printed record of this case; & said Lewis further informed said Whiting that the residue of said bonds had been stolen from him (Lewis) and had never been issued or negotiated by the railroad company; said Whiting also stated that he understood at the time from said Lewis that such of the bonds as had been issued had been disposed of to persons connected with said Lewis in trying to sell the same for their services & to pay other expenses of the office of said company in New York, & for merely nominal sums; that said Whiting further informed affiant that the bonds and also the men engaged in New York in negotiating them were so worthless that both he, said Whiting, & also said Isaac Seymour, refused, after a short acquaintance with said men, to have anything to do with them, & directed them not to come to their offices on any business relating to said bonds; affiant further learned from said Whiting that he still occasionally saw
225 said Lewis in New York City, & believed that he was still in the city, but could not tell where; that affiant made frequest inquir'es

elsewhere in said city to accertain the whereabouts of said Lewis; that he learned that he was in said city but has not yet succeeded in finding him. Affiant has also enquired among brokers in said city to ascertain any facts connected with the issuance of said bonds, & also their market-value, at or about the years 1860 and 1861 & subsequently; that he finds that said bonds were never quoted in the stock-reports of said New York, and that, about the 1st of January, 1874, affiant learned from one Whipple, who resides in Jersey City & who has been a *a* broker in New York City for thirty years past, that he, said Whipple, remembered the fact of said bonds of the Mt. Vernon Railroad Company being offered in the market in New York, & that they had no market-value whatever, when they were so offered & have had none since. That affiant since his said employment has diligently prosecuted said enquir'es, but was unable to communicate to the defendants' solicitors what he had
226 discovered in New York, and herein set forth, until after the 1st day of December last; that he believes he can find said Charles W. Lewis, if further opportunity is allowed him, & that he can prove by said Lewis what is herein stated about said bonds being stolen from him, & that the same at no time had any market-value in New York or elsewhere; that he knows he can prove by said Whiting & Whipple the various facts stated herein as being learned by affiant from them; that he has spent much time in endeavering to ascertain the matters herein stated, & at once informed the said solicitors of defendant of the same, but not until after the said 1st day of December last; & further says not.

HOWLAND TOMPKINS.

Subscribed and sworn to before me this 16th day of February, A. D. 1874.

J. A. JONES, *Clerk.*

(Indorsed:) Filed February 16, 1874. J. A. Jones, clk.

227 And afterwards, to wit, on the seventeenth day of said February, in the term and year aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Interlocuto'y decree.

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, Catherine Earl, & Abraham Riker, executors of Morris J. Earl, decd., Francis E. Parker, William B. Bacon, administrators, and Eliza A. Wakefield, administratrix of Cyrus Wakefield, deceased, J. Sargent Smith, Thomas Upham, Maria Myers, administratrix of Austin Myers, deceased, Thomas Upham, executor of John W. Emerson, deceased, John H. Brown, Henry V. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Rolston,

vs.

THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company.

} Chancery.

228 This cause came on to be heard heretofore, and was submitted

to the court on the pleadings and proofs therein, and on the second day of January, in the year one thousand eight hundred and seventy-one, a decree was entered dismissing the complainants' bill therein with costs; and the said complainants having appealed from the said decree to the Supreme Court of the United States, and the said appeal having been argued and determined, on reading a copy of the opinion and also the mandate of the said Supreme Court reversing the said decree on file, and remanding the cause to this court for a new trial thereof, on reading the pleadings and original and additional proofs of record therein, and on hearing counsel, it is now, at this day, ordered, adjudged, and decreed, and this court, by virtue of the power and authority thereof, doth order, adjudge, and decree, that the mortgage and the trust-deed bearing date the twentieth day of April, in the year one thousand eight hundred and fifty-nine, executed, in behalf of the county of Wayne, in the State of Illinois, to Isaac Seymour, of the city of
229 New York, as trustee, in the pleadings and proofs in this cause mentioned, are valid and sufficient conveyance in the law to pass and convey the lands and premises therein described to the said trustee in trust and as security for the payment of the bonds, amounting to the sum of eight hundred thousand dollars, then issued or to be issued as con'truction bonds in aid of the Mount Vernon Railroad Company, and that the holders and owners of such bonds in good faith and for value have a special lien upon the said lands and premises in said mortgage and in said trust-deed described, for the principal and interest secured by said bonds. And it appearing by the proofs in this cause that the said Isaac Seymour, trustee, &c., departed this life before the commencement of this action without having parted with said trust and without executing the same, it is further ordered, adjudged, and decreed that Walter B. Scates, of the city of Chicago, be, and he is hereby, appointed substituted trustee, in lieu and stead of the said Isaac Seymour, deceased, in and for the purposes of the said mortgage and the said trust-deed aforesaid, with full power and au-
230 thority to look after and preserve the fund herein, subject to the directions of this court. And it further appearing that the bill in this cause is filed by the said complainants in behalf of themselves and all other bona-fide holders of any of the said bonds issued as aforesaid, it is further ordered, adjudged, and decreed that it be referred to John A. Jones, esquire, the master in chancery of this court, to ascertain and determine & report what have been the reasonable and necessary expenses, counsel fee, of the present complainants in and about the institution and prosecution of this suit, together with the taxable costs therein, to that time, and that thereupon the said master be, and he is hereby directed, to give public notice of sixty days, by advertisement of four successive weekly insertions in the Springfield State Register & State Journal and by twenty daily insertions in the New York Herald, requiring all bona-fide holders for value of said bonds not now parties to this suit to appear before the said master, at his office in Springfield, on or before the day in said notice named, and prove their claims,
231 and that all such bondholders, bona-fide and for value, be permitted so to appear and prove their claims under this decree on payment of such share of the costs, expenses, & counsel fees as may hereafter be determined by the court, as conditions upon which they be allowed to submit their claims for final decree of the court. And it is further ordered and decreed that the said master be, and he hereby is, directed on the expiration of said notice to compute and ascertain the amount due to the said complainants and to such bondholders as shall

have come in under this decree on said notice, and proved their claims, upon the terms aforesaid, for principal and interest coupons on the bonds attached or detached, held by such persons respectively, and that said master file his report of the amount so due to each, with the testimony taken by him, and the testimony already taken in the cause may be used before the said master on such reference.

Afterwards, to wit, on the twenty-sixth day of March, of the
232 year last aforesaid, came again the parties, by their solicitors, and filed in the clerk's office of said court a certain agreement herein, which said agreement is in the words and figures following, to wit:

Agreement as to publication.

U. S. circuit court, S. D. Ill.

JOHN W. KENNICOTT ET AL.
vs.
THE SUPERVISORS OF WAYNE COUNTY. } In chancery.

The master in this case (both judges concerning) may insert the notice by the decree required in the New York Herald five days only, the decree to be amended in this respect at the next term, nunc p'o tunc.

S. A. GOODWIN, *of Counsel for Myer.*
WALTER B. SCATES, " " " *& others.*
McCLERNAND & BROADUELL, *Sols. for Hodges.*

(Indorsed:) Filed March 26th, A. D. 1874. J. A. Jones, clk.

And afterwards, to wit, on the eighteenth day of April, in the year last aforesaid, came Richard P. Glenn and Hamilton J.
233 Sprayberry, by Messrs. McClernand and Keys, their solicitors, and filed in said clerk's office their petition to share in decree herein, which said petition is in the words and figures following, to wit:

Petition of Glenn and Sprayberry.

To the honorable the judges of the circuit court of the United States of America within and for the southern district of Illinois. In chancery.

Your petitioners, Richard P. Glenn, a citizen of the State of Tennessee, and Hamilton J. Sprayberry, a citizen of the State of Georgia, respectfully show unto your honors that they are the bona-fide owners, by purchase made by them in the ordinary and legitimate course of business, for a valuable consideration by them paid therefor, of eleven of the construction bonds issued by the Mount Vernon Railroad Company respectively, dated of the first day of April A. D. 1859, respectively of the denomination of one thousand dollars, respectively numbered *numbered* thirty-nine, (39,) forty-one, (41,) forty-three, (43,) sixty-six, (66,) seventy-
five, (75,) seventy-six, (76,) seventy-seven, (77,) seventy-eight,
234 (78,) eighty, (80,) eighty-four, (84,) and ninety, (90,) together with the coupons or interest warrants, twenty-seven (27) in number, attached to each of the said bonds, the said coupons being, respectively, for the sum of thirty-five, ($35 $\frac{00}{100}$,) payable on the first day of April and of November in each and every year; that whereas the circuit court of the United States for the southern district of Illinois did make and

enter an order and decree on Tuesday, February the 17th, A. D. 1874, in the case pending in the said circuit court wherein John W. Kennicott and others are complainants and the Board of Supervisors of Wayne County, Illinois, and others are defendants, providing that bona-fide holders of all such bonds for value, not being parties by name in the record in the said cause, might be permit'ed upon the terms and conditions specified in the said order and decree to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and bene-
235 fits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein: Now, may it please your honors, your petitioners now come producing the said eleven bonds with the said coupons thereto attached, and making their proofs as creditors owning and holding the same as aforesaid, pray to be admitted to share and participate in the fruits and benefits of all orders and decrees that have been made and entered by your honors in said cause, or that may be made and entered therein, and they will ever pray, &c.

RICHARD P. GLENN.
HAMILTON J. SPRAYBERRY.

McCLERNAND & KEYES,
Sols. for said Petitioners.

(Indorsed:) Filed April 18th, 1874. J. A. Jones, clerk.

And afterwards, to wit, on the twenty-ninth day of May, of the year aforesaid, came F. A. Hawley and filed in the clerk's office of said
236 court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of F. A. Hawley.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

MAY 26, 1874.

I, Frederick A. Hawley, of Waltham, in the State and district of Massachusetts, a banker, doing business in Boston, in said State and district, on oath depose and say that I am the owner of construction-bond No. 47, for $500, of the Mt. Vernon R. R. Co., and that I acquired the same for value and in good faith, and have never parted with my interest in the same.

FREDERICK A. HAWLEY.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

MAY 26, 1874.

Personally appeared Frederick A. Hawley above named, who signed the above in my presence and made oath that the above statement by him subscribed is true.

[L. S.]

JOHN G. STETSON,
U. S. Commissioner, Mass. Dist.

(Indorsed:) Filed May 29, 1874. J. A. Jones, clerk.

237 Then afterwards, to wit, on the thirteenth day of May, in the year aforesaid, came Joseph Hayes and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of Joseph Hayes.

STATE OF NEW YORK,
City and County of New York, ss:

JOSEPH HAYES, of the city of New York, in the county and State of New York, being duly sworn, says that on or about the month of June, in the year one thousand eight hundred and sixty-one, he became possessed by purchase as bona-fide holder, and for a good and valuable consideration, of four certain bonds issued by the Mount Vernon Railroad Company, entitled construction bonds, each for the payment of one thousand dollars, numbered nineteen, (19,) thirty-five, (35,) thirty-eight (38,) and sixty, (60,) dated the 20th day of April, in the year one thousand eight hundred and fifty-nine, redeemable the first day of May,
238 in the year one thousand eight hundred and seventy-four, bearing seven per cent. interest, interest-warrants payable in New York; that said bonds are secured by a first mortgage of the said railroad, and one hundred thousand acres situated in Wayne County, in the State of Illinois, executed unto J. Seymour, trustee. That each of said bonds has now attached to it twenty-seven coupons or interest-warrants for thirty-five dollars each; that this deponent became possessed of the said four bonds so as aforesaid by purchasing them in the city of Boston, in the State of Massachusetts; and ever since their said purchase has held the said bonds and still continues to hold the same as their bona-fide owner.

JOSEPH HAYES.

Subscribed and sworn to before me this 28th day of May, 1874.
[L. S.] EDWARD OWEN,
U. S. Commissioner for the Southern District of New York.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

239 Afterwards, to wit, on the first day of June, in the year aforesaid, came John W. Kennicott and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of J. W. Kennicott.

SPRINGFIELD, ILL., *June* 1, '74.

I have paid out for my expenses from Boston, Mass., to Springfield, Ill., to make preparations & commence suit against supervisors of Wayne Co., Ill., for collection of my own individual bonds of the Mount Vernon R. R. Co	$125 00
I have been three times to New York, from Boston, in connection with this suit, at an expense of	75 00
I have paid for small expenses in connection with this suit, at least estimate	50 00
	$250 00

Since the beginning of this suit other parties have come in & shared the benefit of my expenses paid out by me, & also the benefit of my time in furthering the interest of the bondholders, for which I
240 make no charge, but ask to be remunerated for my disbursement made in interest of the other bondholders in suit.

JNO. W. KENNICOTT.

Subscribed and sworn to before me this 1st June, A. D. 1874.
J. A. JONES, *Clk.*

(Indorsed:) Filed June 1, 1874. J. A. Jones, clk.

Then afterwards, to wit, on the fifth day of June, in the year aforesaid, came E. B. Ardery, and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of E. B. Ardery.

Circuit court United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, &c. } In chancery.

E. B. ARDERY, being first duly sworn, deposes and says, in answer to interrogatories, that I am 34 years of age; reside in Wayne
241 County, and have always lived in Wayne County. I am pretty well acquainted with the lands in Wayne County. I know the swamp and overflowed lands of Wayne County. Take the whole body of these lands they would not average more than five dollars an acre at the present time, exclusive of improvements.

E. B. ARDERY.

Subscribed and sworn to before me this 5th June, A. D. 1874.
J. A. JONES, *M. C.*

(Indorsed:) Filed June 5, 1874. J. A. Jones, clerk.

Afterwards, to wit, on the sixth day of June, in the year aforesaid, came Martin M. Wheeler, and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of M. M. Wheeler.

Circuit court United States, southern district Illinois.

JOHN W. KENNICOTT ET AL.
v.
242 SUPERVISORS WAYNE CO., &c. } Chancery.

My name is Martin M. Wheeler; age, 54 years; I have lived in Wayne Co. 50 years, and still reside there; I am acquainted in Wayne Co. generally, and partially with the swamp and overflowed lands of said county. In my opinion the swamp and overflowed lands of that county, without estimating the improvements thereon, are worth, on an average, not exceeding $3 per acre.

M. M. WHEELER.

Subscribed and sworn to before me this June 6, 1874.
J. A. JONES, *M. C.*

(Indorsed:) Filed June 6, 1874. J. A. Jones, clerk.

Affidavit of Joseph Hayes.

STATE OF NEW YORK,
City and County of New York, ss:

JOSEPH HAYES, of the city of New York, in the county and State of New York, being duly sworn, says that on or about the month of June, in the year one thousand eight hundred and sixty-one, he became possessed by purchase as bona-fide holder, and for a good and valuable consideration, of four certain bonds issued by the Mount Vernon Railroad Company, entitled construction bonds, each for the payment of one thousand dollars, numbered nineteen, (19,) thirty-five, (35,) thirty-eight (38,) and sixty, (60,) dated the 20th day of April, in the year one thousand eight hundred and fifty-nine, redeemable the first day of May, in the year one thousand eight hundred and seventy-four, bear-
238 ing seven per cent. interest, interest-warrants payable in New York; that said bonds are secured by a first mortgage of the said railroad, and one hundred thousand acres situated in Wayne County, in the State of Illinois, executed unto J. Seymour, trustee. That each of said bonds has now attached to it twenty-seven coupons or interest-warrants for thirty-five dollars each; that this deponent became possessed of the said four bonds so as aforesaid by purchasing them in the city of Boston, in the State of Massachusetts; and ever since their said purchase has held the said bonds and still continues to hold the same as their bona-fide owner.

JOSEPH HAYES.

Subscribed and sworn to before me this 28th day of May, 1874.
[L. S.] EDWARD OWEN,
U. S. Commissioner for the Southern District of New York.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

239 Afterwards, to wit, on the first day of June, in the year aforesaid, came John W. Kennicott and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of J. W. Kennicott.

SPRINGFIELD, ILL., *June* 1, '74.

I have paid out for my expenses from Boston, Mass., to Springfield, Ill., to make preparations & commence suit against supervisors of Wayne Co., Ill., for collection of my own individual bonds of the Mount Vernon R. R. Co	$125 00
I have been three times to New York, from Boston, in connection with this suit, at an expense of	75 00
I have paid for small expenses in connection with this suit, at least estimate	50 00
	$250 00

Since the beginning of this suit other parties have come in & shared the benefit of my expenses paid out by me, & also the benefit of my time in furthering the interest of the bondholders, for which I
240 make no charge, but ask to be remunerated for my disbursement made in interest of the other bondholders in suit.

JNO. W. KENNICOTT.

Subscribed and sworn to before me this 1st June, A. D. 1874.
J. A. JONES, *Clk.*

(Indorsed:) Filed June 1, 1874. J. A. Jones, clk.

Then afterwards, to wit, on the fifth day of June, in the year aforesaid, came E. B. Ardery, and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of E. B. Ardery.

Circuit court United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, &c. } In chancery.

E. B. ARDERY, being first duly sworn, deposes and says, in answer to interrogatories, that I am 34 years of age; reside in Wayne
241 County, and have always lived in Wayne County. I am pretty well acquainted with the lands in Wayne County. I know the swamp and overflowed lands of Wayne County. Take the whole body of these lands they would not average more than five dollars an acre at the present time, exclusive of improvements.

E. B. ARDERY.

Subscribed and sworn to before me this 5th June, A. D. 1874.
J. A. JONES, *M. C.*

(Indorsed:) Filed June 5, 1874. J. A. Jones, clerk.

Afterwards, to wit, on the sixth day of June, in the year aforesaid, came Martin M. Wheeler, and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

Affidavit of M. M. Wheeler.

Circuit court United States, southern district Illinois.

JOHN W. KENNICOTT ET AL.
v.
242 SUPERVISORS WAYNE CO., &c. } Chancery.

My name is Martin M. Wheeler; age, 54 years; I have lived in Wayne Co. 50 years, and still reside there; I am acquainted in Wayne Co. generally, and partially with the swamp and overflowed lands of said county. In my opinion the swamp and overflowed lands of that county, without estimating the improvements thereon, are worth, on an average, not exceeding $3 per acre.

M. M. WHEELER.

Subscribed and sworn to before me this June 6, 1874.
J. A. JONES, *M. C.*

(Indorsed:) Filed June 6, 1874. J. A. Jones, clerk.

Then afterwards, to wit, on the ninth day of June, in the year aforesaid, came D. L. Phillips, and filed in the clerk's office of said court his affidavit herein, which said affidavit is in the words and figures following, to wit:

243 *Affidavit of D. L. Phillips.*

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY.

David L. Phillips, being first duly sworn, deposes and says that on the 1st day of March, 1864, in the city of Boston, in the State of Massachusetts, he received for collection, of John W. Kennicott, Mount Vernon Railroad bonds numbered as follows, and in sums as noted, with 27 coupons attached to each bond, for $17 $\frac{50}{100}$ each.

No. 14	$500
" 15	500
" 34	500
" 212	500
" 252	500
" 254	500

And that said bonds were placed in the hands of the attorneys of Kennicott and others, and that subsequently thereto the said bonds have been mislaid and cannot be found.

DAVID L. PHILLIPS.

Subscribed and sworn to before me this 8th June, 1874.

J. A. JONES, *M. C.*

244 (Indorsed:) Filed June 9, 1874. J. A. Jones, clk.

Afterwards, to wit, on the twelfth day of said June, in the year last aforesaid, came the master in chancery of this court, to whom this cause was referred February seventeenth, 1874, and files his report herein, which said report, together with the exhibits therein referred to, and two motions of defendant, in writing, to reject proof of claims before said master, are in the words and figures following, to wit:

Master's report.

In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois, impleaded with the Mount Vernon Railroad Company. } Chancery.

The report of John A. Jones, master in chancery of said court, to whom, by the interlocutory decree herein rendered at the January
245 term, A. D. 1874, this cause was referred, "to ascertain and determine, and report what have been the reasonable and necessary

expenses, counsel-fee, of the present complainants, in and about the institution and prosecution of this suit, together with the taxable costs therein to that time," and also "to compute and ascertain the amount due to the said complainants, and to such bondholders as shall have come in under this decree, on said notice, and proved their claims upon the terms aforesaid for principal and interest-coupons on the bonds attached or detached, held by such persons respectively." Said master to the court respectfully reports that, first having given public notice of the time and place of such examination, according to the terms of said decree, by publication in the Illinois State Register, Illinois State Journal, and New York Herald, (certified copies of which are herewith filed, marked "A," "B," & "C,") he proceeded to take proof within the time limited by said decree, at his office in Springfield, Illinois, and finds upon the proofs and affidavits herewith filed, and marked
246 "D" & "E," that there was expended by the parties complainants in this cause at the time of rendering said decree, $1,840.85.

Said master also finds by said Exhibits A, B, C, said complainants expended for publication of notice	97 00
Said master further finds that complainants have expended, as per fee-bill of clerk, prior to date of interlocutory decree.	267 64
And subsequent to decree	8 75
Master's fees on this reference	100 00
Total costs to date	$473 39

Said master also reports that by depositions of Milton Hay and H. S. Green (herewith filed, marked Exhibit "I,") ten per cent. on amount of face of bonds in suit was proved to be a reasonable complainant's solicitor's fee for instituting and prosecuting this cause.

Said master further reports that, by proofs produced, the following named persons (who were parties complainant before the entry of said interlocutory decree) were entitled on the 1st day of May, 1874, for bonds and coupons, to the sums opposite their names respectively,
247 (for detailed statement and recapitulation, reference is more particularly made to exhibits hereunto filed,) including interest on 1st day of May, 1874, at 6 per cent.

Cyrus Wakefield	$99,955 00
Joseph W. Ward	83,955 00
Austin Myers	125,335 00
Wm. R. Hodges	134,847 50
Morris J. Earl	18,425 00
John H. Brown	51,060 00
Wm. P. Emerson	15,437 50
Wm. R. Rolston	5,800 00
John J. Dixwell	7,832 50
Joseph Burnett	3,890 00
Wm. C. Plunckett	3,855 00
Joseph Smith	7,605 00
John W. Kennicott	5,835 00
John L. Priest	972 50
Eben W. Stone	972 50
John S. Smith	937 50
Henry V. Davis	937 50
Arthur F. Gould	402 50
Andrew H. Ward	6,382 50
Total	$574,437 50

Said master also reports that by proofs produced the following named persons (who were not parties to this suit before the entry of said
248 interlocutory decree) were entitled on the 1st day of May, 1874, for bonds and coupons, to the sums opposite their names, respectively. (For detailed statement and recapitulation, reference is more particularly made to exhibits herewith filed.)

Henry Fuller	$3,925 00
Wed. W. Clarke	17,925 00
McMartin & Alexander	10,645 00
Isaac Taylor	24,732 00
Glenn & Sprayberry	21,395 00
Nathaniel H. Streeter	5,940 00
John L. Bleakley	7,850 00
H. N. Holden	990 00
Amidon, Lane & Co	1,980 00
Ransom & Gear	20,500 00
Roxanna Crego	955 00
Herman Powers	937 50
Ransom, Geer & Co	1,910 00
Total	$119,684 50

To the admission of which last-named bonds the defendants, by their solicitors, then and there excepted.

Said master further reports that complainants offered in evidence affidavits of the following original parties to this suit, to wit:
249 Joseph Burnett, John J. Dixwell, Cyrus Wakefield, Isaac Taylor, Joseph Smith, and W. P. Emerson, relating to the purchase and ownership of bonds by the affiants, to the admission of which affidavits the defendants, by their solicitors, then and there excepted.

Said master also reports that the defendants, by their solicitors, offered the following evidence, abstracted from the printed record in this cause in the Supreme Court of the United States, to wit:

1. Agreement made Sept. 12, 1859, between Mt. Vernon R. R. Co. & Smith, (p. 51.)
2. Mortgage & record, (p. 52.)
3. Trust-deed & record, (p. 66.)
4. Record of proceedings, (p. 79.)
5. Deposit agreement with Hersey of the date of April, 1859, 200 of $500 & 300 of $1,000, (p. 90.)
6. Casey's order June 15, 1859, (p. 93.)
7. Hersey's receipt for 300, June 20, (p. 93.)
8. Order of Wayne Co., Dec. 14, 1859, (p. 93.)
9. Wilson's receipt for 400,000, June 18, '60, (p. 93.)
10. Lewis' receipt, June, 1860, (p. 93.)
11. Wilson's letter.
12. Iron contract Jan. 26, 1860, (p. 128.)

1st delivery March 1, 1860.

250 13. Vanduzer contract, (p. 132.)
14. J. W. Ward, deposition, (p. 135.)
15. J. H. Brown, do. (p. 135.)
16. Austin Myers, do. (p. 136.)
17. M. J. Earl, do. (p. 137.)
18. W. R. Hodges, deposition & examination, (p. 143.)

19. David M. Johnson, Nov. 28, 1873.
20. Alfred W. Beasley.
21. Examination of N. A. Smith, Dec. 9, 1873.

To the admission of said abstracted evidence the complainant', by their solicitors, then and there excepted.

Said master further reports that the defendants, by their solicitors, introduced in evidence the depositions of the following persons, herewith filed and made part of this report, to wit: Downing Baugh, Rigdow B. Slocumb, Edward Bonham, Samuel J. R. Wilson, William Irwin, Robert T. Forth, John N. Whiting, Charles H. Dillingham, Norman A. Smith, Augustus T. Post, and A. W. Beasley, to the admission of which depositions the complainants, by their solicitors, then and there excepted.

Said master further reports that the defendants, by their solic-
251 itors, introduced in evidence certain letters herewith filed and referred to, as follows:

Date.	From—	To—
Dalton, Ga., Oct. 23, 1860	James Morris	Charles Lewis.
Logansport, Ind., Dec. 22, "	S. B. Kendrick	S. J. R. Wilson.
" " March 16, 1861	do	Do.
New York, May 22, "	J. T. Vanduzer	Do.
" " July 26, 1860	Ira Hersey	Do.
" " Sept. 3, "	Ira Hersey	S. J. R. Wilson.
Fairfield, August 27, "	S. J. R. Wilson	Chas. W. Lewis.
	C. W. Lewis	Judge Wilson.
New York, August 10, 1860	Ira Hersey	Do.
" " " 3, "	S. B. Kendrick	S. J. R. Wilson.
" " " 1, "	do	Do.
" " May 14, 1861	J. T. Vanduzer	Do.

To the admission of which letters the complainants, by their solicitors, then and there excepted.

Said master also reports that the defendants, by their solicitors, introduced two certain motions in writing to reject and disallow the several claims therein mentioned, which motions are herewith filed and made part of this report. To the admission of which motions the complainants then and there excepted.

The master asks the court for a reasonable compensation
252 herein, all of which is respectfully submitted.

June 12, 1874.

J. A. JONES,
M. C., C. C. U. S., S. D. Ills.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

EXHIBIT A.

In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, Catharine Earl, and Abraham Riker, administrator of Morris J. Earl, deceased; Francis E. Parker, William B. Bacon, administrator, and Eliza A. Wakefield, administratrix, of Cyrus Wakefield, jr., deceased; Sargent Smith, Thomas Upham, Maria Myers, administratrix of Austin Myers, deceased; Thomas Upham, executor of John W. Emerson, deceased; John H. Brown, Henry B. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L.
253 Rolston, complainants,
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company, defendants.

} In chancery. Exhibit A.

Pursuant to a decretal order in said entitled cause, rendered on the 17th day of February, A. D. 1874, at the January term of said circuit court, held at Springfield, in said district, directing the master in chancery of said court to take and report proofs of the claims of all said holders of the construction-bonds of the Mount Vernon Railroad Company, not now parties to this suit, as may have acquired and owned any of said bonds, bona fide and for value, the undersigned master in chancery of said circuit court hereby notifies all such bondholders to be and appear before me at my office in said Springfield, on or before the 22d day of May next, then and there to prove their claims under said order.

J. A. JONES,
Master in Chancery.

254 MARCH 19, 1874.

Walter B. Scates, sol. for compl't, room 50 Ashland block, Chicago.

Mar. 19, w4w

STATE OF ILLINOIS, SANGAMON COUNTY,
City of Springfield, May 1st, 1874.

We, the undersigned publishers of the Illinois State Register, a public newspaper printed in the city, county, and State aforesaid, do hereby certify that a notice, of which the annexed is a true copy, has been regularly published in said paper four weeks in weekly *in* succession, commencing on the 19th day of March, and ending on the 9th day of April, 1874.

Given under our hands at the city of Springfield this 1st day of May, 1874.

E. L. MERRITT & BRO.,
Publishers.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clk.

EXHIBIT B.

In the circuit court of the United States for the southern district of Illinois.

255 JOHN W. KENNICOTT, JOSEPH W. WARD, Andred H. Ward, Ebenezer W. Stone, Catherine Earl, and Abraham Riker, administrators of Morris J. Earl, deceased; Francis E. Parker, William B. Bacon, administrator, and Eliza A. Wakefield, administratrix, of Cyrus Wakefield, deceased; J. Sargent Smith, Thomas Upham, Maria Myers, administratrix of Austin Myers, deceased; Thomas Upham, executor of John W. Emerson, deceased; John H. Brown, Henry B. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Rolston, complainants,

vs.

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois, impleaded with the Mount Vernon Railroad Company, defendants.

} In chancery. Exhibit B.

Pursuant to decretal order in said entitled cause, rendered on
256 the 17th day of February, A. D. 1874, at the January term of said circuit court, held at Springfield in said district, directing the master in chancery of said court to take and report proof of claims of all such holders of the construction-bonds of the Mount Vernon Railroad Company, not now parties to this suit, as may have acquired and owned any of said bonds bona fide and for value. The undersigned, master of chancery of said circuit court, hereby notifies all said bondholders to be and appear before me at my office, in said Springfield, on or before the 22d day of May next, then and there to prove their claims under said order.

J. A. JONES,
Master in Chancery.

MARCH 19, 1874.

Walter B. Scates, solr. for complts, Room 50, Ashland block, Chicago, Ills.

Mch. 21 d1taw4w.

STATE OF ILLINOIS,
Sangamon County, City of Springfield, ss:

257 The undersigned, publishers of the Illinois State Journal, a public newspaper, printed in the city, county, and State aforesaid, do hereby certify that an advertisement, of which the annexed is a true copy, has been regularly published in said paper four weeks in succession, the first publication being on the 23 day of March, 1874, and the last on the 13th day of April, 1874.

Given under my hand at the city of Springfield this 9th day of June, 1874.

ILL. JOURNAL CO.,
By CHAS. EDWARDS.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clk.

EXHIBIT C.

In the circuit court of the United States, southern district of Illinois, ss :

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, Catherine Earl, and Abraham Riker, executors of Morris J. Earl, deceased ; Francis E. Parker, William B. Bacon, administrators, and Eliza A. A. Wakefield, administratrix, of Cyrus Wakefield, deceased ; J. Sargent Smith, Thom-
258 as Upham, Maria Myers, administratrix of Austin Myers, deceased ; Thomas Upham, executor of John W. Emerson, deceased ; John H. Brown, Henry B. Davis, William R. Hodges, John L. Priest, William C. Plunkett, John J. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Rolston, complainants,

THE BOARD OF SUPERVISORS OF WAYNE COUNty, Illinois, impleaded with the Mount Vernon Railroad Company.

In chancery. Exhibit C.

Pursuant to a decretal order in said entitled cause, rendered on the 17th day of February, A. D. 1874, at the January term of said circuit court, held at Springfield, in said district, directing the master in chancery of said court to take and report proofs of the claims of all such holders of the construction-bonds of the Mount Vernon Railroad
259 Company, not now parties to this suit, as may have acquired and own any of said bonds bona fide and for value, the undersigned, master in chancery of said circuit court, notifies all such bondholders to be and appear before me at my office in said Springfield, on or before the 31st day of May next, then and there to prove their claims under said order.

J. A. JONES,
M. C. U. S. C. C. S. D. Ills.

SPRINGFIELD, ILLS., *March* 16, *A. D.* 1874.

Walter B. Scates, solicitor for complainants. Room 50, Ashland block, Chicago, Ills.

CITY AND COUNTY OF NEW YORK, *ss:*

Timothy C. Costello, of the city and county of New York, being duly sworn, deposes and says that he is chief advertising clerk in the office of the New York Herald, a paper printed and published in said city of New York, and that the advertisement, as per annexed copy, was published in the said New York Herald, five times, viz, March 31 to April 4, 1874, incl., and that the amount charged is just and correct.

TIMOTHY C. COSTELLO.

Sworn before me this 6th day of April, 1874.

JOHN F. FITZPATRICK,
Notary Public, Commissioner of Deeds.

(Indorsed :) Filed June 12, 1874. J. A. Jones, clk.

(Indorsed :) Filed March 9, A. D. 1874. J. A. Jones, clerk.

260 EXHIBIT D.—*Expense a/c.*

Circuit court of the United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, &C. } In chancery. Exhibit D.

Walter B. Scates, being first duly sworn, deposes and says that he has examined the account of expenses of the complainants now presented to the master for examination and report thereon, and that he knows, of his own knowledge, that the following items were paid as numbered on the margin of the account in red ink, in brackets, to-wit:

Item of	$20 00,	November 25, 1870.
Item of	$125 00,	January 27, 1873.
" "	$11 25,	February 12, 1867.
" "	$51 00,	August 27, 1869.
" "	$24 00,	September, 8, 1869.
" "	$46 25,	December 31, 1869.
" "	$27 00,	" " "
" "	$227 00,	January 5, 1870.
" "	$900 ,	February 8, 1870.
	$1,411 50	

261

Item of	75	cents, October 7, 1870.
" "	$19 00	November 1, "
" "	$30 00	" " "
" "	$29 00	" " "
" "	$50 00	" 30, 1873.
" "	$88 50	January 8, 1871.
" "	$87 10	May 18, 1873.
" "	$125 00	" 5, "
	$429 35	

WALTER B. SCATES.

Subscribed & sworn to before me this 9th day of June, A. D. 1874.
J. A. JONES, *M. C.*

William R. Hodges, being first duly sworn, deposes and says that he has examined the account of the expenses of the complainants hereinbefore referred to in the deposition of W. B. Scates, and knows of his own knowledge the moneys referred in the following items were paid, to wit: Item of $585.00, from June, 1869, to June, 1870, and item of $125.00, of May 5th, 1873.

W. R. HODGES.

262 Subscribed and sworn to before me this 9th day of June, A. D. 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

EXHIBIT E.

United States circuit court, south'n dist. of Ills.

JNO. W. KENNICOTT ET ALS.
vs.
THE BOARD OF SUPERVISORS OF WAYNE CO. } In chancery. Exhibit E.

Account of costs & expenses paid by the following parties herein, to wit:

Paid by Jas. W. Ward:

1864, M'ch 1. [1]	To paid Jno. L. Phillips, of Springfield, for copies of deed of trust & other papers....			35 65
1869, Oct. 14 [2]	" paid J. A. Brown for expenses in taking deposition in New York, & paying Dr. Smith's expenses to & from New York, & while there in giving the above-mentioned depositions			123 50
1870. Jan. 5	" paid Judge Scates, d'ft, towards exp'es			40 00
263 Nov. 25. [3]	" paid for printed injunction issued by U. S. dist. court			20 00
1873, Jan. 27. [4]	" Judge Scates' expenses to Washington, to argue case before Supreme Court.....	170 00		
	" for printing.....	80		
		250 00		
[5]	deduct ½ (refunded by Hodges).....	125 00		125 00

Paid by W. B. Scates:

1867. [6]			
Feb. 12. [7]	To paid for copy & bill of expenses.....		11 25
1869.			
Aug. 27. [8]	" " expenses trip to Fairfield & copies....		51 00
Sep. 8. [9]	" " " " " Mt. Vernon & copies.		24 00
Dec. 31. [10]	" " " " to Mt. Vernon & Fairfield		46 28
Dec. 31.	Travelling-expenses on above trip.....		27 00
Jan. 5. [11]	Expenses to New Orleans to examine papers, &c., for use in suit.....		227 00
Feb'y 8. [12]	Taking dep'ns at Mt. Vernon.....		9 00
Oct. 7. [13]	Expressages on papers.....		75
Nov. 1. [14]	Copies of mortgage & other papers.....		19 00
" " [15]	Expenses to Fairfield & Mt. Vernon.....		30 00
" 30. [16]	Do do to Mill Shoals on Waste.....		29 00
1899 & 1870. [17]	Expenses to Fairfield & Mt. Vernon te take deposition		50 00

Paid by W. R. Hodges:

June '69 to June '70.	To expenses of journeys from Springfield to New York, thence to New Orleans, and afterwards again to New York, back to New Orleans, in search of & in obtaining papers for use in suit.....	585 00

	[18]	To paid cash cost of printing.....	88 50
Feby 8.	[19]		
1873.			
May 18.	[19]	" " " "	87 10
" 5.	[20]	" " half Judge Scates' expens., other half paid by Ward.....	125 00
			$1,754 00

NOTE.—Figures in brackets were in red ink in the original.

The undersigned has acted as attorney for the following parties to the suit, and what they have paid has been paid through him, and is included in the above, and they will have no bill to present.

ESTATE OF W. P. EMERSON.
JOHN S. SMITH.
HENRY V. DAVIS.
JOHN L. PRIEST.
W. C. PLUNKETT.
W. L. ROLSTON.
JOSEPH SMITH.
J. J. DIXWELL.
A. F. GOULD.
ANDREW H. WARD.
JOSEPH BURNETT.
EBEN W. STONE.

NAPA CITY, CALIFORNIA, *March* 2, 1874.

Subscribed and sworn to before me this 3d day of March, 1874.
[L. S.]
C. B. SEELEY,
County Clerk, Napa Co., Cala.

265 $87.10. CHICAGO, *May* 14, 1873.

At sight pay to the order of Chas. Heusotin, cashr., eighty-seven $\frac{10}{100}$ dollars, value received, and charge the same to account of
WALTER B. SCATES.

To Wm. R. Hodges, esq., New Orleans, or Kenner, La.

(Indorsed:) Pay A. Laria, cash., or order, for collection, account Merchants' Sav. Loan Trust Co., Chicago. Henry E. Low, asst. cashr. May 19, '73. Chas. Sautara.
[Stamp.]

88.50. BOSTON, *February* 18th, 1871.

Five days after sight, please pay to the order of myself eighty-eight $\frac{50}{100}$ dollars, value received, and charge to account of
Yours, truly,
JOSEPH W. WARD.

To Wm. R. Hodges, esq. Notify post-office box 2348, New Orleans.

266 (Indorsed:) February 24, Joseph W. Ward. Pay Ch. Juvenville, cashier, or order. Jr. Sulley. M. V. R. R. Draft of J. W. Ward for proportion of cost of record in Springfield, which was $167.00; my proportion $88.50. $125.00 of this is for Judge Scates' exchanges on Mt. V. R. R., 50 for remittance of Ward to Moore on H. V. Butler.

Exch. for $175.00. BOSTON, *Feb'y 1st*, 1873.

Three months after sight pay this first of exchange, second unpaid, to the order of myself one hundred and seventy-five dollars, value received, and charge the same to account of
JOSEPH W. WARD.

To W. R. Hodges, New Orleans, La.

(Written across the face:) Accepted Feb. 5th, '73. Payable at 35 Carondolet st., May 5, 5-8, 1873.

W. R. HODGES.

(Indorsed:) Mt. V. R. R. Ward's dft. $175.00. May 8, '73.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

JOSEPH W. WARD.

267 Pay to order of National Bank, N. Orleans.

A. A. ALD. HALL.
Cash'r.

Stipulation as to proof.

In the circuit court of the United States for the northern district of Illinois.

JOHN W. KENNICOTT, ET ALS.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company. } Civil action.

It is hereby stipulated and agreed between the parties hereto that no objection is made to the form or mode of proof of the account of expenses of Joseph W. Ward, sworn to on March 3d, 1874, before C. B. Seeley, county clerk of Napa County, California; that the jurat & attestation of said C. B. Seeley, clerk, as aforesaid, shall be held and taken in lieu of and as a full equivalent for the notice & general parts of the dep-
268 osition, & everything relating to form thereof, is hereby expressly waived.

WALTER B. SCATES,
Solicitor for Complainants.
N. S. FREEMAN &
ROBINSON, KNAPP & SHUTT,
Solrs. for Board of Supervisors, Way'e County.

SPRINGFIELD, ILLS., *Apl.* 25, 1874.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

EXHIBIT I.—*Deposition of M. Hay.*

The deposition of Milton Hay, a witness produced and sworn and examined before John A. Jones, master in chancery of the circuit court of the United States for the southern district of Illinois, at his office in Springfield, Ills., on the second day of June, in the year of our Lord one thousand eight hundred and seventy-four, to be read in evidence on the part of the complainants in a certain cause pending in said circuit court, on the chancery side thereof, wherein John W. Kennicott and others are complainants, and the board of supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Com-
269 pany, are the defendants.

The said Milton Hay, being first duly sworn, deposes and says, in answer to the interrogatories propounded, as follows:

Int. 1. Please state if you were once and originally retained in this suit and know the kind and amount of professional labor bestowed by yourself and other attorneys engaged in the case from the beginning of the suit until the present time, giving, as far as you may desire, your means of information and such explanations and reasons you may choose for the conclusion at which you may arrive as to the value of all the professional services rendered in it. Please give your statement in narrative form without further questions, and in conclusion please state what, in your opinion and judgment, would be a reasonable compensation for all the services rendered in the case from the beginning until now?

Ans. Mr. Weldon and myself filed the original bill in this case, and I and the firm with which I am connected were continuously in the
270 cause down to and including the trial thereof in this court before it was taken to the supreme court. We prepared with the assistance of Gen. McClernand and Judge Scates the last amended bill upon which the cause was tried. The case was one of great difficulty. The locality of the transactions out of which the bonds in question in the cause had been issued was in Southern Illinois. There was no record of the transaction obtainable, and the parties to the transaction were either dead or widely scattered. The bondholders could furnish the counsel no information as to the history of the transactions, so as to afford a clue by which the facts could be ascertained, and counsel were obliged to grope for the facts by their personal exertions; as counsel resided at Chicago and Springfield, this was done at great disadvantage. This rendered it extremely difficult to prepare a bill in the cause upon which the case could be rested for trial. The bill was amended from time to time as new facts were discovered, and was twice argued on demurrers before the final amended bill was filed. I know it was
271 very difficult to prepare the amended bill on which the hearing was had, for the reason that there was much confusion and s me obscurity in the several railway charters and acts of the legislature from which the power to issue the bonds and execute the mortgage or deed of trust in this cause was to be derived, and the great uncertainty that existed at the time as to what steps had been taken in the transaction that were capable of being proved. The preparation of the final amended bill occupied several weeks. The gathering of the necessary facts to perfect the pleadings and to bring the case properly and safely to trial was in progress several years. The original bill was filed, I think, in 1865, and the case was brought to a hearing in 1870. As the answer in the cause denied the material portions of the bill, it became necessary to hunt up and gather the evidence from different points in the United States. Some of the material evidence was in the hands of parties who were averse to producing it, and this, together with the neces-
272 'ity of ascertaining what the facts were and by whom to prove them, rendered it necessary for Judge Scates, one of the counsel in the cause, to take several journeys from Chicago to Southern Illinois, to New York, and finally to New Orleans. The evidence, when collected, was still controverted, and upon the hearing several witnesses were examined, which, with the argument of counsel, occupied several days. The case was decided in the circuit court adversely to the complainants, and the cause was taken to Supreme Court. All the necessary preparations was there made for properly presenting it to that court. It was argued, and the cause decided in favor of complainants. Since its remanding here much additional labor has been required to bring it to a final decree.

Up to the hearing of the cause in the circuit court before it went to

(Written across the face:) Accepted Feb. 5th, '73. Payable at 35 Carondolet st., May 5, 5-8, 1873.

W. R. HODGES.

(Indorsed:) Mt. V. R. R. Ward's dft. $175.00. May 8, '73.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

JOSEPH W. WARD.

267 Pay to order of National Bank, N. Orleans.

A. A. ALD. HALL.
Cash'r.

Stipulation as to proof.

In the circuit court of the United States for the northern district of Illinois.

JOHN W. KENNICOTT, ET ALS.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company. } Civil action.

It is hereby stipulated and agreed between the parties hereto that no objection is made to the form or mode of proof of the account of expenses of Joseph W. Ward, sworn to on March 3d, 1874, before C. B. Seeley, county clerk of Napa County, California; that the jurat & attestation of said C. B. Seeley, clerk, as aforesaid, shall be held and taken in lieu of and as a full equivalent for the notice & general parts of the dep-
268 osition, & everything relating to form thereof, is hereby expressly waived.

WALTER B. SCATES,
Solicitor for Complainants.
N. S. FREEMAN &
ROBINSON, KNAPP & SHUTT,
Solrs. for Board of Supervisors, Way'e County.

SPRINGFIELD, ILLS., *Apl.* 25, 1874.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

EXHIBIT I.—*Deposition of M. Hay.*

The deposition of Milton Hay, a witness produced and sworn and examined before John A. Jones, master in chancery of the circuit court of the United States for the southern district of Illinois, at his office in Springfield, Ills., on the second day of June, in the year of our Lord one thousand eight hundred and seventy-four, to be read in evidence on the part of the complainants in a certain cause pending in said circuit court, on the chancery side thereof, wherein John W. Kennicott and others are complainants, and the board of supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Com-
269 pany, are the defendants.

The said Milton Hay, being first duly sworn, deposes and says, in answer to the interrogatories propounded, as follows:

Int. 1. Please state if you were once and originally retained in this suit and know the kind and amount of professional labor bestowed by yourself and other attorneys engaged in the case from the beginning of the suit until the present time, giving, as far as you may desire, your means of information and such explanations and reasons you may choose for the conclusion at which you may arrive as to the value of all the professional services rendered in it. Please give your statement in narrative form without further questions, and in conclusion please state what, in your opinion and judgment, would be a reasonable compensation for all the services rendered in the case from the beginning until now?

Ans. Mr. Weldon and myself filed the original bill in this case, and I and the firm with which I am connected were continuously in the
270 cause down to and including the trial thereof in this court before it was taken to the supreme court. We prepared with the assistance of Gen. McClernand and Judge Scates the last amended bill upon which the cause was tried. The case was one of great difficulty. The locality of the transactions out of which the bonds in question in the cause had been issued was in Southern Illinois. There was no record of the transaction obtainable, and the parties to the transaction were either dead or widely scattered. The bondholders could furnish the counsel no information as to the history of the transactions, so as to afford a clue by which the facts could be ascertained, and counsel were obliged to grope for the facts by their personal exertions; as counsel resided at Chicago and Springfield, this was done at great disadvantage. This rendered it extremely difficult to prepare a bill in the cause upon which the case could be rested for trial. The bill was amended from time to time as new facts were discovered, and was twice argued on demurrers before the final amended bill was filed. I know it was
271 very difficult to prepare the amended bill on which the hearing was had, for the reason that there was much confusion and s me obscurity in the several railway charters and acts of the legislature from which the power to issue the bonds and execute the mortgage or deed of trust in this cause was to be derived, and the great uncertainty that existed at the time as to what steps had been taken in the transaction that were capable of being proved. The preparation of the final amended bill occupied several weeks. The gathering of the necessary facts to perfect the pleadings and to bring the case properly and safely to trial was in progress several years. The original bill was filed, I think, in 1865, and the case was brought to a hearing in 1870. As the answer in the cause denied the material portions of the bill, it became necessary to hunt up and gather the evidence from different points in the United States. Some of the material evidence was in the hands of parties who were averse to producing it, and this, together with the neces-
272 'ity of ascertaining what the facts were and by whom to prove them, rendered it necessary for Judge Scates, one of the counsel in the cause, to take several journeys from Chicago to Southern Illinois, to New York, and finally to New Orleans. The evidence, when collected, was still controverted, and upon the hearing several witnesses were examined, which, with the argument of counsel, occupied several days. The case was decided in the circuit court adversely to the complainants, and the cause was taken to Supreme Court. All the necessary preparations was there made for properly presenting it to that court. It was argued, and the cause decided in favor of complainants. Since its remanding here much additional labor has been required to bring it to a final decree.

Up to the hearing of the cause in the circuit court before it went to

the Supreme Court, different bondholders, then complainants in the cause were represented by different counsel, five or six in all, all contributing in different proportions to the labor in the cause. In my opinion,
273 considering the difficulties of the case, the amount of labor involved, the measure of success that has attended the case, (mainly, as I think, by the exertions of counsel,) ten per cent. of the amount recovered, (assuming the amount recovered at $300,000.00, and not, exceeding $400,000.00) would be a reasonable allowance to cover all counsel fees in the case. I have this upon my experience of fees in litigated cases in the State courts. Ten per cent. of the amount of a litigated claim anywhere in amount from $5,000 to $50,000 is considered reasonable, where the case has been carried through the circuit and Supreme Courts, and where the whole liability is contested, and both law and facts are controverted. It may be thought that the greater amount here involved should lesson the percentage, but the greater number of counsel in requisition in this cause, with the unusual character of the labor involved, would, in my opinion, render it but reasonable to apply this ordinary ten per cent. rule to the amount recovered here.

M. HAY.

Subscribed and sworn to before me this 4th June, 1874.

J. A. JONES, *M. C.*

274 *Deposition of H. S. Greene.*

I, Henry S. Greene, being first duly sworn according to law, depose and say that I have read the foregoing statements of Mr. Hay, and that I personally know the same facts as therein stated to be true.

And I further say that I concur with Mr. Hay with respect to the amount of fees for legal services which, in my opinion, ought to be allowed to complainants. I further say that I am, and have been for five years, one of the firm of Hay, Greene & Littler, attorneys.

H. S. GREENE.

Subscribed and sworn to before me this 3d day of June, A. D. 1874.

J. A. JONES, *Clk.*

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Abstract of amt. of bonds & coupons.

	Sum of bonds.	Sum of coupons.	Sum of bonds and coupons.	Int. on coupons from maturity to May 1, 1874, 6% per annum.	Sum of bonds, coupons, and int. coupons May 1, 1874.
1. Henry Fuller	2,000	1,925 00	3,925 00	765 45	4,690 45
2. Cyrus Wakefield	50,500	49,455 00	99,955 00	20,015 62	119,970 62
3. Joseph W. Ward	43,000	40,955 00	83,955 00	14,677 41	98,632 41
275 4. Austin Myers	63,000	62,335 00	125,335 00	25,528 65	150,863 65
5. Wm. R. Hodges	49,500	85,347 50	134,847 50	50,797 42	185,644 92
6. Morris J. Earle	9,500	8,925 00	18,425 00	3,465 00	21,890 00
7. Wed. W. Clarke	9,000	8,925 00	17,925 00	3,660 30	21,585 30
8. John H. Brown	26,000	24,587 50	50,087 50	9,742 39	59,829 89
9. McMartin and Alexander	5,500	5,145 00	10,645 00	1,986 07	12,631 07
10. Wm. P. Emerson	8,000	7,437 50	15,437 50	2,853 90	18,291 40
11. Wm. A. Rolston	3,000	2,800 00	5,800 00	1,078 35	6,878 35
12. John J. Dixwell	4,000	3,832 50	7,832 50	1,516 72	9,349 22
13. Isaac Taylor	12,500	12,232 00	24,732 00	4,947 07	29,679 07
14. Joseph Burnett	2,000	1,890 00	3,890 00	737 10	4,627 10
15. Wm. C. Piunckett	2,000	1,855 00	3,855 00	709 80	4,564 80
16. Glenn and Sprayberry	11,000	10,395 00	21,395 00	4,054 05	25,449 05
17. Nathaniel H. Streeter	3,000	2,940 00	5,940 00	1,190 70	7,130 70
18. Joseph Smith	4,000	3,605 00	7,605 00	1,348 20	8,953 20
19. John L. Blakeley	4,000	3,850 00	7,850 00	1,530 90	9,380 90
20. John W. Kennicott	3,000	2,835 00	5,835 00	1,105 65	6,940 65
21. H. N. Holden	500	490 00	990 00	198 45	1,188 45
22. Ammidown Lane & Co	1,000	980 00	1,980 00	396 90	2,376 90
23. Ransom & Geer	11,000	10,500 00	20,500 00	4,567 50	25,067 50
24. John L. Priest	500	472 50	972 50	184 27	1,156 77
25. Eben W. Stone	500	472 50	972 50	184 27	1,156 77
26. Roxanna Crego	500	455 00	955 00	170 62	1,125 62
27. John S. Smith	500	437 50	937 50	157 50	1,095 00
28. Henry V. Davis	500	437 50	937 50	157 50	1,095 00
29. Herman Powers	500	437 50	937 50	157 50	1,095 00
30. Arthur F. Gould		402 50	402 50	278 76	681 26
31. Andrew H. Ward	3,000	3,382 50	6,382 50	1,634 31	8,016 81
	$333,000 00	359,739 50	691,239 50	159,798 33	851,037 83

276 (Indorsed:) Filed June 12th, A. D. 1874. J. A. Jones, clk.

Voucher No. 1 to abstract.

Interest on coupons of $35.00 each attached to bond numbered 336, of $1,000, to May 1, 1874, at 6 % per annum	$396 90
Amount of 28 coupons, @ $35 each	980 00
One bond of $1,000	1,000 00
Amount due May 1, 1874	$2,376 90
Sum of bond and coupons attached	$1,980 00
Interest on same from May 1 to June 1, 1874	9 90
	$1,989 90
Interest on coupons to May 1, 1874	396 90
Amount due June 1, 1874	$2,386 80
Interest on coupons of $17.50 each attached to bonds numbered 33 and 71, of $500 each, to May 1, 1874, @ 6 % per annum	$368 55
Amount of 54 coupons, $17.50 each	945 00
" 2 bonds of $500 each	1,000 00

Amount due May 1, 1874	$2,313 55
Sum of bonds & coupons attached	$1,945 00
Interest on same from May 1 to June, 1874	9 72
" coupons to May 1, 1874	368 55
Amount due June 1, 1874	$2,323 27
Sum total of bonds and coupons attached	$3,925 00
Interest on same to June 1, from May 1, 1874	19 62
277 Total interest on coupons to May 1, 1874	765 45
Total amount due June 1, 1874	$4,710 07

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Voucher No. 2. to abstract.

Interest computed on coupons of $35 each attached to $1,000 bonds, @ 6 % per annum:

Coupons of Nov., 1860, to May, 1874	$28 35
" May, 1861, " "	27 30
" Nov., " " "	26 25
" May, 1862, " "	25 20
" Nov., " " "	24 15
" May, 1863, " "	23 10
" Nov., " " "	22 05
" May, 1864, " "	21 00
" Nov., " " "	19 95
" May, 1865, " "	18 90
" Nov., " " "	17 85
" May, 1866, " "	16 80
" Nov., " " "	15 75
" May, 1867, " "	14 70
" Nov., " " "	13 65
" May, 1868, " "	12 60
" Nov., " " "	11 55
" May, 1869, " "	10 50
278 Coupons, Nov., " " "	9 45
" May, 1870, " "	8 40
" Nov., " " "	7 35
" May, 1871, " "	6 30
" Nov., " " "	5 25
" May, 1872, " "	4 20
" Nov., " " "	3 15
" May, 1873, " "	2 10
" Nov., " " "	1 05
Total interest on coupons to each bond	$396 90
Total interest on coupons to each bond	$396 90
Sum of coupons to each bond 28x35	980 00
	$1,376 90

50 bonds of 1,000	$50,000 00
Amount of coupons to same	49,000 00
Interest on coupons to May 1, 1874	19,845 00
Amount due May 1, 1874	118,845 00
1 bond No. 351, $500	$500 00
26 coupons of $17.50 each attached to same	455 00
Interest on 26 coupons to May 1, 1874	170 62
Amount due on said bond & coupons May 1, 1874	$1,125 62
Sum of bonds & coupons due May 1, 1874	$99,955 00
Interest on same from May 1, June 1, 1874, @ 6 %	499 77
" due on coupons May 1, 1874	20,015 62
	$120,470 39

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Voucher No. 3 to abstract.

28 $1,000 bonds, Nos. 276, 59, 130, 267, 268, 323, 359, 386, 388, 390, 395, 396, 397, 404, 405, 406, 407, 408, 409, 436, 402, 372, 358, 357, 356, 352, 351, & 56	$28,000 00
739 coupons, ea. $35	27,865 00
Int. on do. to May 1, 1874, 6 %	9,857 40
Amount due May 1, 1874	$65,722 40
30 $500 bonds, Nos. 19, 40, 41, 43, 45, 48, 230, 253, 251, 93, 358, 366, 355, 368, 369, 373, 374, 394, 400, 282, 279, 281, 280	$15,000 00
748 coupons attached to same, ea. $17.50	13,090 00
Int. on do. to May 1, 1874, 6 %	4,820 01
Amount due May 1, 1874	$32,910 01
Total sum of bonds & coupons	$83,955 00
Int. on same from May 1 to June 1, 1874	419 77
Int. on coupons to May 1, 1874	14,677 41
Amount due June 1, 1874	$99,052 18

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280 *Voucher No. 4 to abstract.*

Interest computed on coupons of $35, each attached to $1,000 bond, @ 6 % per annum:

Coupon of May, 1860, to May 1, 1874	$29 40
" Nov., " " "	28 35
" May, 1861, " "	27 30
" Nov., " " "	26 25
" May, 1862, " "	25 20
" Nov., " " "	24 15
" May, 1863, " "	23 10

Coupons of	Nov.,	1863,	to	May 1,	1874	22 05
"	May,	1864,	"	"		21 00
"	Nov.,	"	"	"		19 95
"	May,	1865,	"	"		18 90
"	Nov.,	"	"	"		17 80
"	May,	1866,	"	"		16 80
"	Nov.,	"	"	"		15 75
"	May,	1867,	"	"		14 70
"	Nov.,	"	"	"		13 65
"	May,	1868,	"	"		12 60
"	Nov.,	"	"	"		11 55
"	May,	1869,	"	"		10 50
"	Nov.,	"	"	"		9 45
"	May,	1870,	"	"		8 40
"	Nov.,	"	"	"		7 35
"	May,	1871,	"	"		6 30
"	Nov.,	"	"	"		5 25
"	May,	1872,	"	"		4 20
"	Nov.,	"	"	"		3 15
281 "	May,	1873,	"	"		2 10
"	Nov.,	"	"	"		1 05
Total interest on coupons of each bond						$426 30
Sum of coupons to each bond 29 x 35						$1,015 00
Amount of coupons & interest of each bond						1,441 30
40 bonds of $1,000						$40,000 00
Amount of coupons to same						40,600 00
" interest on " " May 1, 1874						17,052 00
Amount due May 1, 1874						$97,652 0
Sum of bonds & coupons attached						80,600 00
Interest on same from May 1, June 1, 1874, @ 6 %						403 00
Interest due on coupons May 1, 1874						17,052 00
Amount due June 1, 1874						$98,055 00

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282 *Voucher No. 5 to abstract.*

Coupons detached from bonds.

287 coupons, No. 1, due Nov. 1, 1859, Nos. 301, 303, 314, 337, 342, 600, & 20, ea. $35	$10,045 00
Interest on same to May 1, 1874, @ 6 %	8,719 15
293 coupons, No. 2, due May 1, 1860, Nos. 301, 303, 314, 337, 342, 600, 20, 131, 132, 133, 125, 218, 219, each $35.	10,255 00
Int. on same to May 1, 1874, @ 6 %	8,614 20
137 coupons, No. 3, due Nov. 1, 1860, Nos. 451, 497, 499, 500, 515, 550, 551, 600, 317, 449, & 450, each $35	4,795 00
Int. on same to May 1, 1874, @ 6 %	3,883 95
One coupon, No. 4, due May 1, 1861, No. 317, $35	35 00
Interest on same to May 1, 1874, @ 6 %	27 30

270 coupons, No. 1, Nov. 1, 1859, Nos. 159, 118, 134, 207, 400, each $17.50		4,725 00
Int. on same to May 1, 1874, 6 %		4,110 75
270 coupons, No. 2, May, 1860, Nos. 1, 59, 118, 134, 207, 400, each $17.50		4,725 00
Int. on same to May 1, 1874, 6 %		4,110 75
270 coupons, No. 2, May, 1860, Nos, 159, 118, 134, 207, 400, each $17.50		4,725 00
Int. on same to May 1, 1874, 6 %		3,969 00
283 127 coupons, No. 3, due Nov. 1, 1860, Nos. 129, 51, 59, 259, 286, 291, 298, 347, 348, 256, 351, 400, each $17.50		2,222 50
Interest on same to May 1, 1874		1,799 22
2 coupons No. 4, due May 1, 1861, Nos. 255, & 256, $17.50.		35 00
Interest on same to May 1, 1874, 6 %		27 30
Amount due May 1, 1874		$67,988 37
Total sums of detached coupons		$36,837 50
Int. on same from May 1, June 1, 1874, 6 %		184 18
Total sums of int. on coupons to May 1, 1874		31,150 87
Sum total due June 1, 1874		$68,172 55
Interest computed on coupons of $35 each, at 6 %:		
Coupons of Nov., 1860, to May, 1874		$28 35
" " 1861, " "		27 30
" Nov., " "		26 25
" May, 1862, " "		25 20
" Nov., " "		24 15
" May, 1863, " "		23 10
" Nov., " "		22 05
" May, 1864, " "		21 00
" Nov., " "		19 95
" May, 1865, " "		18 90
" Nov., " "		17 85
" May, 1866, " "		16 80
" Nov., " " "		15 75
284 " May, 1867, " "		14 70
" Nov., " " "		13 65
" May, 1868, " "		12 60
" Nov., " "		11 55
" May, 1869, " "		10 50
" Nov., " "		9 45
" May, 1870, " "		8 40
" Nov., " "		7 35
" May, 1871, " "		6 30
" Nov., " "		5 25
" May, 1872, " "		4 20
" Nov., " "		3 15
" May, 1873, " "		2 10
" Nov., " "		1 05
Total interest		396 90
28 coupon of $35 each		980 00
Bond, $1,000.00		1,000 00

Amount due on each $1,000, with coupons as above stated, May 1, 1874	$2,376 90
3 bonds with coupons as above	7,130 70
Interest on coupons, $17.50 each, at 6 %, attached to $500 bond as above	$198 45
28 coupons, $17.50 each	490 00
1 $500 bond	500 00
	1,188 45
	7,130 70
	$8,319 15
Sums of bonds and coupons due May 1, 1874	$6,930 00
Interest due on coupons "	1,389 15
285 Interest on bonds & coupons from " to June 1, 1874, $6,930.00, @ 6 %	34 65
	8,353 80

Bonds & coupons described in deposition numbered 7, & filed July 2, 1870.

18 bonds, Nos. 583–600, ea. $1,000	$18,000 00
504 coupons on same, (28 on each,) $35	17,640 00
Interest on same to May 1, 1874, 6 %	7,144 20
Amount due May 1, 1874	$42,784 20
56 bonds, $500, Nos. 310–346, 243–246, 235–242, 249, 350, 119, 126, 233, 223, & 255	$58,000 00
1,568 coupons attached to same	27,440 00
Interest on same to May 1, 1874, 6 %	11,113 20
	$66,553 20
Sum of above-described bonds & coupons	$91,080 00
Interest on same from May 1—June 1, 1873, 6 %	455 40
" coupons to May 1, 1874	18,257 40
Total amount due June 1, 1874	$109,792 80

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Voucher No. 6 to abstract.

Interest on coupons of $35 attached to 7 $1,000 bonds, numbered 495, 514, 553, 567, 570, 572, 574, to May 1, 1874, at 6 % per annum	$2,472 75
286 Amount of 135 coupons, @ $35	6,475 00
" 7 bonds of $1,000	7,000 00
Amount due May 1, 1874	$15,947 75

Interest on coupons of $17.50 each, attached to 5 bonds of $500, numbered 505, 506, 507, 508, & 509, to May 1, 1874, at the rate of 6 % per annum	$992 25
Amount of 140 coupons of $17.50	2,450 00
" 5 bonds of $500	2,500 00
Amount due May 1, 1874	$5,942 25
Total sum of bonds & coupons	$18,425 00
Interest on same May 1 to July 1, 1874	92 12
Total amount interest on coupons	3,465 00
" " due June 1, 1874	$21,982 12

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Voucher No. 7 to abstract.

5 $1,000-bonds, Nos. 135, 297, 298, 300, & 399	$5,000 00
143 coupons attached to do. do., ea. $35	5,005 00
Int. on 143 coupons to May 1, 1874	2,072 70
Sum due June 1, 1874	$12,077 70
8 $500, Nos. 72, 73, 81, 82, 83, 84, 86, & 89	$4,000 00
224 coupons attached to same, ea. $17.50	3,920 00
287 Int. on 224 coupons to May 1, 1874	1,587 60
Sum due June 1, 1874	$9,507 60
Sum total of bonds & coupons	$17,925 00
Int. on same from May 1 to June, 1874	89 62
Int. on coupons to May 1, 1874	3,660 30
Sum due June 1, 1874	$21,674 92

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Voucher No. 8 to abstract.

3 bonds of $1,000, Nos. 8, 122, & 366	$3,000 00
78 coupons attached to same, ea. $35	2,730 00
Int. on coupons to May 1, 1874, @ 6 %	1,024 80
Amount due May 1, 1874	$6,754 80
3 bonds of $500, Nos. 2, 20, & 24	$1,500 00
79 coupons of $17.50 each	1,382 00
Int. on 39 coupons to May 1, 1874, @ 6 %	525 52
Amount due May 1, 1874	$3,408 02
Total sum of bonds & coupons	$8,612 50
Int. on same from May to June 1, 1874, 6 %	43 06
" coupons to May 1, 1874	1,550 32
Sums total due June 1, 1874	$10,205 88

	63 coupons detached from bonds Nos. 395, 130, 133, 207, 219, 383, 388, 391, 392, ea. $17.50	$1,102 50
288	Int. on 9 coupons, May, 1864, to May 1, 1874, 6 %	94 50
	" " Nov., 1863, " " "	99 22
	" " May, " " "	103 95
	" " Nov., 1862, " " "	108 67
	" " May, " " "	113 40
	" " Nov., 1861, " " "	118 12
	" " May, " " "	122 85
	13 coupons, $17.50, Nos. 119, 120, 122, 22, 257, 97, 144, & 473	227 50
	Int. on 7 coupons, Nov., 1861, to May 1, 1874, 6 %	91 87
	" 6 " May, " " "	81 90
		2,264 48
	Sum of coupons	$1,330 00
	Int. on same from May 1–June 1, 1874, 6 %	6 65
	Int. do. to May 1, 1874	934 48
	Amount due June 1, 1874	$2,271 13
	Interest on coupons of $35 each, attached to 11 $1,000 bonds, numbered 318, 319, 320, 322, 344, 413, 459, 119, 120, 144, 258, to May 1, 1874, at 6 % per annum	$4,035 15
	Sum of 296 coupons, @ $35	10,360 00
	" " bonds, at $1,000	11,000 00
	Amount due May 1, 1874	$25,395 15
	Interest on coupons, of $17.50 each, attached to 20 bonds of $500, numbered 51, 59, 97, 247, 266, 268, 287,	
289	383, 385, 387, 390, 391, 395, to May 1, 1874, at 6 % per annum	$3,222 44
	Sum of 502 coupons, of $17.50	8,785 00
	" 20 bonds, of $500 each	10,000 00
	Amount due May 1, 1874	$22,007 00
	Sums total of bonds & coupons	$40,145 00
	Interest on same from May to June 1, 1874	200 72
	Sum of interest due May 1, 1874	7,257 59
	Total amount due June 1, 1874	$47,603 31

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Voucher No. 9 to abstract.

	3 $1,000 bonds, No. 253, 255, & 275	$3,000 00
	81 coupons attached, do. do. ea. $35	2,835 00
	Int. on 81 coupons to May 1, 1874, 6 %	1,105 65
	Amount due May 1, 1874	$6,940 65
	5 bonds, $500, Nos. 96, 104, 109, 269, & 270	$2,500 00

132 coupons attached, do. do.	2,310 00
Int. on 132 coupons to May 1, 1874	880 42
Amount due May 1, 1874	$5,690 42
Sum of bonds & coupons	$10,645 00
Int. on do. May 1 June 1, 1874, 6 %	53 22
Int. coupons to May 1, 1874	1,986 07
Amount due June 1, 1874	12,684 29

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Voucher No. 10 *to abstract.*

Interest on coupons of $35 each, attached to three $1,000 bonds numbered 116, 460, 471, to May 1, 1874, at 6 % per annum	$1,078 35
Amount of 80 coupons of 35 each	2,800 00
" 3 bonds of $1,000	3,000 00
Amount due May 1, 1874	$6,878 35
Interest on coupons of $17.50, attached to 10 bonds of $560 each, numbered 10, 11, 100, 113, 214, 215, 226, 234, 248, 396, to May 1, 1874, 6 %	$1,775 55
Amount 265 coupons of $17.50	4,637 50
" 10 bonds of $500	5,000 00
Amount due May 1, 1874	$11,413 05
Sum-total of bonds & coupons	$15,437 50
Interest on same from May to June 1, 1874	77 18
Total amount interest due on coupons May 1, 1874	2,853 90
Total amount due June 1, 1874	$18,368 58

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Voucher No. 11 *to abstract.*

291 Interest on coupons of $35 each attached to 2 $1,000 bonds, numbered 375 & 384, to May 1, 1874, at 6 % per annum	$709 80
Amount of coupons, 53, @ $35 each	1,855 00
" 2 bonds of $1,000 each	2,000 00
Amount due May 1, 1874	$4,564 80
Interest on coupons of $17.50 each, attached to two $500 bonds numbered 44 & 50, to May 1, 1874, at 6 % per annum	$368 55
Amount of coupons, 54, @ $17.50	945 00
" 2 bonds of $500 each	1,000 00
Amount due May 1, 1874	$2,313 55

Total sum of bonds and coupons attached	$5,800 00
Interest on same, 6 %, from May 1 to June 1, 1874	29 00
Sum of interest due on coupons May 1, 1874	1,078 35
Amount due June 1, 1874	$6,907 35

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 12 *to abstract.*

Interest on coupons of $35 each, attached to two $1,000 bonds numbered 18 & 53, to May 1, 1874, at 6 % per annum	$765 45
Amount of coupons, 55, @ $35	1,925 00
" 2 $1,000 bonds	2,000 00
Amount due May 1, 1874	$4,690 45

292 Interest on coupons of $17.50 each, attached to four $500 bonds numbered 4, 79, 134, 227, to May 1, 1874, @ 6 % per annum $751 27

Amount of 109 coupons, @ $17.50	1,907 50
" 4 bonds @ $500 each	2,000 00
Amount due May 1, 1874	$4,658 77

Tota sum of bonds and coupons attached	$7,832 50
Interest on same from May 1 to June 1, 1874, @ 6 %	39 16
Total amount interest due on coupons May 1, 1874	1,516 72
Amount due June 1, 1874	$9,388 38

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 13 *to abstract.*

8 bonds Nos. 23, 29, 282, 286, & 394, ea. $1,000	$8,000 00
224 coupons attached to same, @ $35	7,840 00
Interest to May 1, 1874, on the above 224 coupons from their due date, at 6 %	3,175 20
Amount due May 1, 1874	19,015 20

3 bonds, Nos. 78, 115, & 116, ea. 500	$1,500 00
83 coupons attached to same $17.50	1,452 00
Interest to May 1, 1874, on the above 83 coupons from their due date, at 6 %	581 17
Amount due May 1, 1874	$3,533 17

293 Sum of above bonds & coupons $18,792 00

Interest on same from May June 1, 1874	93 96
Coupons to May 1, 1874	3,756 37
Amount due June 1, 1874	22,642 33

(Additional bonds:)

3 $1,000 bonds, Nos. 353, 354, & 355	$3,000 00
84 coupons attached to do	2,940 00
Int. on do. to May 1, 1874, 6%	1,190 70
	$7,130 70
Sum of last bonds & coupons	$5,940 00
Int. on do. do. 6% from May 1 to June 1, 1874	29 70
" coupons to May 1, 1874, 6 %	1,190 70
	$7,160 40
	22,642 33
Sum of above due June 1, 1874	$29,802 73

(Indorsed:) Filed June 12, 1874. J. A. Jones, clk.

Voucher No. 14 *to abstract.*

Interest on coupons of $35 each attached to two $1,000 bonds, Nos. 628, 466, to May 1, 1874, @ 6 % per annum.	$737 10
Amount of 54 coupons @ $35 each	1,890 00
" 2 bonds, $1,000 each	2,000 00
Amount due May 1, 1874	$4,627 10
294 Sum of bonds and coupons attached	$3,890 00
Interest on same from May 1 to June 1, 1874	19 45
" coupons to May 1, 1874	737 10
Amount due June 1, 1874	$4,646 55

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 15 *to abstract.*

Interest on coupons of $35 each attached to two $1,000 bonds numbered 61 & 376, to May 1, 1874, @ 6 % per annum	$709 80
Amount of coupons, 53, @ $35	1,855 00
" 2 bonds, $1,000 each	2,000 00
Amount due May 1, 1874	$4,564 80
Sum of bonds and coupons attached	$3,855 00
Interest on same from May 1 to June 1, 1874, 6 %	19 27
" due on coupons May 1, 1874	709 80
Amount due June 1, 1874	$4,584 07

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 16 *to abstract.*

Interest computed on coupons of $35 each at 6 %:

Coupons of May, 1861, to May, 1874		$27 30
" Nov., " "		26 25
" May, 1862, "		25 20
" Nov., " "		24 15
" May, 1863, "		23 10
295 Coupons of Nov., 1863, to May, 1874		$22 05
" May, 1864, "		21 00
" Nov., " "		19 95
" May, 1865, "		18 90
" Nov., " "		17 85
" May, 1866, "		16 80
" Nov., " "		15 75
" May, 1867, "		14 70
" Nov., " "		13 65
" May, 1868, "		12 60
" Nov., " "		11 55
" May, 1869, "		10 50
" Nov., " "		9 45
" May, 1870, "		8 40
" Nov., " "		7 35
" May, 1871, "		6 30
" Nov., " "		5 25
" May, 1872, "		4 20
" Nov., " "		3 15
" May, 1873, "		2 10
" Nov., " "		1 05
Total interest on coupons to each bond		$368 55
Sum of coupons to each bond 27x35		945 00
Each bond		1,000 00
Amount due on each $1,000 bond, with coupons attached, May 1, 1874		2,313 55
11 bonds, coupons, & interest		$25,449 05
Sum of 11 $1,000 bonds, with coupons attached, as above stated		21,395 00
296 Interest on coupons to May 1, 1874		4,054 05
Interest on bonds & coupons from May 1 1874, $21,395.00, @ 6 % June 1,		106 97
		$25,556 02

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 17 *to abstract.*

3 bonds, Nos. 16, 17, & 27, ea. $1,000	$3,000 00
84 coupons on same, (28 on each bond,) ea. $35	2,940 00
Interest to May 1, 1874, on the above 84 coupons from their due date at 6 %	1,190 70
Amount due May 1, 1874	$7,130 70

Sum of bonds and coupons		$5,940 00
Interest on same from May 1 June 1, 1874, 6 %		29 70
" coupons to May 1, 1874		1,190 70
Amount due on above June 1, 1874		$7,160 40

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 18 *to abstract.*

Interest on coupons of $35 each, attached to 4 $1,000 bonds, numbered 12, 13, 22, & 30, to May 1, 1874, at 6 % per annum		$1,348 20
Amount of coupons, 103, @ $35		3,605 00
" 4 bonds, $1,000 each		4,000 00
Amount due May 1, 1874		$8,953 20
297 Sum of bonds & coupons attached		$7,605 00
Interest on same from May 1 June 1, 1874, @ 6 %		38 02
" due on coupons May 1, 1874		1,348 20
Amount due June 1, 1874		8,991 22

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 19 *to abstract.*

Interest on coupons of $35 each, attached to 4 $1,000 bonds, numbered 362, 403, 523, 524, to May 1, 1874, @ 6 % per annum		$1,530 90
Amount of 110 coupons of $35 each		3,850 00
" 4 $1,000 bonds		4,000 00
Amount due May 1, 1874		$9,380 90
Sum of bonds and coupons attached		$7,850 00
Interest on same from May 1 to June 1, '74		39 25
" coupons to May 1, 1874		1,530 90
Amount due June 1, 1874		$9,420 15

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 20 *to abstract.*

	Bonds per receipt of D. L. Phillips, March 1, 1864:	
298	6 bonds Nos. 14, 15, 34, 212, 252, & 254, each of $500	$3,000 00
	162 coupons of $17.50 attached to same	2,835 00
Int. to May 1, 1874, on above coupons at 6 %		1,105 65
Amount due May 1, 1874		6,940 65
Sum of bonds and coupons		$5,835 00
Int. on same from May to June 1, 1874, 6 %		29 17
" coupons to May 1, 1874		1,005 65
Amount due June 1, 1874		$6,969 82

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 21 to abstract.

One bond, No. 304, of $500	$500 00
28 coupons attached to same, @ $17.50	490 00
Int. on coupons to May 1, 1874	198 45
Amount due May 1, 1874	1,188 45
Sum of bond & coupons	$990 00
Int. on same, May 1 June 1, 1874, 6 %	4 95
" coupons to May 1, 1874	198 45
Amount due June 1, 1874	1,193 40

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

299 *Voucher No. 22 to abstract.*

1 bond, No. 331, of $1,000	$1,000 00
28 coupons attached to same, $35	980 00
Int. on 28 coupons to May 1, 1874, @ 6 %	396 90
Amount due May 1, 1874	$2,376 90
Sum of bond & attached coupons	$1,980 00
Int. on same from May 1 June 1, 1874, 6 %	9 90
" coupons to May 1, 1874	396 90
Amount due June 1, 1874	$2,386 80

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 23 to abstract.

10 bonds, $1,000, Nos. 304–312	$10,000 00
300 coupons attached to same (30 each,) $35	10,500 00
Int. to May 1, 1874, on the above 300 coupons, 6 %	4,567 50
Amount due May 1, 1874	$25,067 50
Sum of bonds & coupons	$20,500 00
Int. on same from May 1 June 1, 1874, 6 %	102 50
" on coupons to May 1, 1874	4,567 50
Amount due June 1, 1874	$25,170 00

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

300 *Voucher No. 24 to abstract.*

Interest on coupons of $17.50 each, attached to one bond of $500, numbered 42, to May 1, 1874, @ 6 % per annum	$184 27
Amount of 27 coupons of $17.50 each	472 50
One bond of $500	500 00
Amount due May 1, 1874	$1,156 77

Sum of bond and coupons attached	$972 50
Interest on same, 6 %, from May 1 to June 1, 1874	4 86
" coupons to May 1, 1874	184 27
Amount due June 1, 1874	1,161 63

(Indorsed:) Filed June 1, 1874. J. A. Jones, clerk.

Voucher No. 25 to abstract.

Interest on coupons of $17.50 each, attached to one bond of $500, numbered 353, to May 1, 1874, @ 6 % per annum	$184 27
Amount of 27 coupons of $17.50 each	472 50
One bond of $500	500 00
Amount due May 1, 1874	1,156 77
Sum of bond and coupons attached	$972 50
Interest on same from May 1 to June 1, 1874, 6 %	4 86
" on coupons to May 1, 1874	184 27
Amount due June 1, 1874	$1,161 63

301 (Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 26 to abstract.

1 $500 bond, numbered 278	$500 00
26 coupons attached to same, ea. $17.50	455 00
Interest to May 1, 1874, on the above 26 coupons, from their due date, at 6 %	170 62
Amount due May 1, 1874	$1,125 62
Sum of bonds & coupons	$955 00
Interest on same from May June 1, 1874	4 77
" coupons to May 1, 1874	170 62
Amount due June 1, 1874	$1,130 39

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 27 to abstract.

Interest on coupons of $17.50 each, attached to one bond $500, numbered 49, to May 1, 1874, @ 6 % per annum	$157 50
Amount of 25 coupons of $17.50 each	437 50
One bond of $500	500 00
Amount due May 1, 1874	$1,095 00
Sum of bond and coupons attached	$937 50
Interest on same from May 1 to June 1, 1874	4 68
302 " coupons to May 1, 1874	157 50
	$1,099 68

(Indorsed:) June 12, 1874. J. A. Jones, clerk.

Voucher No. 28 to abstract.

Interest on coupons of $17.50 each, attached to one bond of $500, numbered 210, to May 1, 1874, @ 6 % per annum	$157 50
Amount of 25 coupons of $17.50 each	437 50
One bond of $500	500 00
	1,095 00
Sum of bond and coupons attached	$937 50
Interest on same from May 1 to June 1, 1874	4 68
" coupons to May 1, 1874	157 50
	$1,099 68

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 29 to abstract.

One $500 bond, No. 22	$500 00
25 coupons attached to same, $17.50	437 50
Int. on coupons to May 1, 1874	157 50
Amount due May 1, 1874	$1,095 00
Sum of bonds & coupons	937 50
Int. on same from May 1 to June 1, 1874	4 68
303 Int. coupons to May 1, 1874	157 50
Amount due June 1, 1875	$1,099 68

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Voucher No. 30 to abstract.

Interest computed on coupons of $17.50 each, at 6 % per annum:

No. 224, 389, 393.	3 coupons of	May, 1861, to May, 1874		$40 95
" " " "	" "	Nov. " " "		39 37
224, 225, 389, 390, 393.	5 "	May, 1862, " "		63 00
224, 389, 393.	3 "	Nov., " " "		36 22
" " "	3 "	May, 1863, " "		34 65
" " "	3 "	Nov., " " "		33 07
" " "	3 "	May, 1864, " "		31 50

Interest on above coupons to May 1, 1874	$278 76
Amount of 23 coupons of $17.50 each	402 50
Amount due May 1, 1874	681 26
Sum of coupons	402 50
Interest on same from May 1 to June 1, 1874	2 01
" " coupons to May 1, 1874	278 76
Total amount due June 1, 1874	683 27

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

304 *Voucher No.* 31 *to abstract.*

Interest on coupons of $35 each, attached to one $1,000 bond, numbered 11, to May 1, 1874, at 6 % per annum..	$368 55
Amount of 27 coupons, @ $35	945 00
One $1,000 bond	1,000 00
Amount due May 1, 1874	$2,313 55
Interest on coupons of $17.50 each, attached to 4 $500 bonds, numbered 47, 209, 229, & 257, to May 1, 1874, @ 6 % per annum	$463 57
Amount of coupons 69, of $17.50	1,387 50
" 4 bonds of $500	2,000 00
Amount due May 1, 1874	$3,851 07
Total sum of bonds & coupons attached	$5,332 50
Interest on same from May to June 1, 1874	26 66
Total interest on coupons to May 1, 1874	832 12
Amount due June 1, 1874, total	$6,191 28

Interest on coupons detached, of $35, to May 1, 1874, @ 6 %:

Numbered 10, 60, 61, 62, 63, 65, 71, 136, 252, 257, 258, 259, 260, 287, 292.	15	coupons of	Nov., 1860, to May, 1874	425 25
376 & 395.	2	"	May, 1861 " "	54 60
Interest on above coupons				$479 85
Amount of 17 coupons, of $35				595 00
Amount due May 1, 1874				$1,074 85
Sum of coupons described last				$595 00
Interest on same from May 1 June 1, 1874				2 97
305 Interest on same to May 1, 1874				479 85
Amount due June 1, 1874				$1,077 82

Interest on coupons detached, of $17.50, to May 1, 1874, @ 6 %:

Numbered 374, 373, 290, 210, 225, 390, 385.	7	coupons of	May, 1861, to May, 1874	$95 55
49, 290, 210, 225, 385; 390.	6	"	Nov., " "	78 75
385.	1	"	May, 1862, "	12 60
225, 390, 385.	3	"	Nov., " "	36 22
" " "	3	"	May, 1863, "	34 65
" " "	3	"	Nov., " "	33 07
" " "	3	"	May, 1864 "	31 50
Interest on above coupons to May 1, 1874				$322 34
Amount of 26 coupons of $17.50				455 00
Amount due May 1, 1874				$777 34

Total sum of all bonds & coupons herein described.....	$6,382 50
Interest on same from May 1, 1874 to June 1, 6 %.....	31 91
" due on coupons May 1, 1874.....	1,634 31
Sum total due June 1, 1874.....	$8,048 72

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Morris to Lewis.

DALTON, GA., *Oct'r 23d*, 1860.

CHARLES LEWIS, Esqr.,
Treas. M. V. R. R.. Co.

306 DEAR SIR: Your favor of the 20 Aug't received, which I have not replied to; intended to have done so, feeling an interest in your road. The endorsers, Messrs. Kendrick & Crippen, have not taken up the notes of the company referred to in your letter; have promised to do so by returning the currancy of the Bank of Whitfield. Mr. Kendrick was in New York on the 18th inst., & is probably there at this time. Something must be done with the notes; the currancy for which they were given is being returned for redemption. I am not able to take it up. They have no means here to do it with. If you see Mr. K. will you urge on him the neces'ity of attending to it at once. I hold the coupons of thirty-four of the bonds of the company due 1st Novr.; send them to the Park Bank, No. 9, to be presented. I hope they will be paid, as they cost me 100 cents on the dollar, & transferred to me by the consent and approbation of the board of directors 1st Feb'y last. I am in a great strait for money, having used all I could raise & borrow to save the bank; will be ruined unless they are paid, having borrowed money on their credit. Will it as a great favor of you to do what you
307 can to assist me. It is a good enterprise if carried out. I was in the section of the road in May last, & much pleased with the country.

Respectfully, your ob't serv't,

JAMES MORRIS.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Kendrick to Wilson.

LOGANSPORT, *Dec. 22d*, 1860.

Judge S. J. R. WILSON:

DEAR SIR: I have written you several times, but have not rec'd any answer. I do not understand why you are not willing to answer my letters.

I rec'd a letter this morning from Mr. Grant saying that you was in Mount Vernon in November last, with the proxies, and wished to call a meeting and elect a new board of directors and leave out all the old ones except Lewis, Hersey, Grant, Gov. Casey, & yourself. I would ask you if I have not always acted in this whole matter with your advice & consent? I have advanced more money than all the rest of them,
308 and have done so with the assurance from you that all should be right, and I only look to you to make it so, and I hope at least you will use your influence to have right done. I wrote you from Dalton saying that I had taken up the note the company gave the Whitfield Bank, and Mr. Crippen has done the same, and I am satisfied Mr. Crip-

pen wants nothing only what is right, & he will do right in every particular.

I wish, on receipt of this, you would write me fully.

Yours truly,

S. B. HENDRICK.

I think there should be a meeting of the directors for the purpose of having a settlement made with all who has had anything to with the bonds, & see what has become of them, and have everything settled up. What do you think of this arrangement?

S. B. HENDRICKS.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Kendrick to Wilson.

LOGANSPORT, *March 16th*, 1861.

S. J. R. WILSON, Esqr.:

DEAR SIR: Your letter dated the 4th inst. & postmarked the
309 9th was duly rec'd. I have waited a few days before writing to hear from one of the parties who will undertake to build yours if I can get matters in a right shape; it will depend very much on your action. With your assistance I can so arrange matters relative to the bonds so that the parties will take them, or, in other words, will take the lands and run the risk of the bonds. I could explain the whole matter to you if I was sure you would act with me in the matter & not favor those New York men. I leave in a few days for Dalton, Geo., and I wish you would write me fully all the particular' of what they have done and what they say they will or can do, and about what you mean as to your township organization. What have they to do with the building of the road? Write me fully about the whole mat'er. I feel confident I can parties who will build the road for the lands, and will not ask them any faster than they do the work, which should of been the course taken on the start, and I suppose your people would not object to give the lands in they get the road. Write me often & fully.

Yours, &c.,

S. B. KENDRICK.

310 (Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Vanduze to judge.

NEW YORK, *May 22nd*, 1861.

DEAR JUDGE: The deal with Hersey & Elting has all fell through, just as I expected. Hersey's tongue is the cause, & I have taken the whole thing back in my own hands. Will you send me an order for Mr. Seymour to deed to me or bearer the lands that you gave to Elting? I have 3 or 4 good trades I can make, & can do well for you & myself; I can trade for domestic goods, any amount of them, if can get the order soon. I shall trade in this place for one of McCormick's machines for you. I like them better than any I have seen. Elting is going to help me; I hope you will come on again. I think you can make more here than there. I will ship your machine inside of 6 days; I think I shall go home to-morrow or next day & will wait for your order, & come im-
mediately back here & trade for goods. I understand Lewis &
311 Hodge are or have made a trade for 80,000 worth of goods; I hope so. Yours in haste. Ans. immediately.

J. T. VANDUZER.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Hersey to Wilson.

NEW YORK, *July 26th*, 1860.

Judge S. J. R. WILSON:

MY DEAR FRIEND: Yours of the 19th inst. was duly rec'd, and I am very glad to hear that Edwards & Wabash were so favorably disposed to carry out our plans. Much longer time has already elapsed than I supposed would have pass'd before being on our way to your place, but I trust we (Mr. Lewis, Mr. Davis, & myself) will be ready to leave early next week. When we do leave, I will telegraph that you may meet us at Zenia. Before we go to Fairfield, I think we should meet somewhere on the way out and have all our plans well matured before going to your place or to Mt. Carmel. We must all pull together and we shall be
312 sure to gain our object. Mr. Lewis is at work about your goods. I believe hardware, crockery, &c. was ship'd yesterday, and I hope everything will be got off this week. I send you enclosed the report of grain market. As soon as I can see you we will see what can be done in shipment of wheat to this market. Mr. Lewis has just rec'd a dispatch from Mr. Grant that the contract which the Mt. Vernon people had made with Mr. Baron, or somebody else, had fallen through. Don't let them (the Jefferson people) get any knowledge whatever of our movements. We will treat with them after Wayne County is provided for. Jefferson County has undertaken to carry out her railroad plans without acknowledging the rights of the stockholders of the Mt. Vernon R. R. Co., & & I think it is only acting right, if we parties in interest make such arrangements as shall best protect our rights and interests.

You, on the part of Wayne County, have stood by me, and done everything in your power to protect all parties that have acted fairly, &
313 you will find me with you and your county; and you can rely upon it we shall "win." Matters have moved slowly, but I have no reason to doubt the integrity of Mr. L. & Mr. D.; they have had too many difficulties, created by Smith, Van D. & Co., to meet.

Yours truly,

IRA HERSEY.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Hersey to Wilson.

NEW YORK, *Sept. 3d*, 1860.

Judge S. J. R. WILSON:

MY DEAR FRIEND: I was very glad to hear from you to day. It is the first letter I rec'd from you since Lewis & Davis left here. Now, judge, I want you to come here immediately; lose no time in doing so. Mr. Lewis has purposely misrepresented me to you. Come here and examine his accounts and my own acs. with the co., and see for yourself who is right and who is wrong. If I have done anything wrong I am not aware of it; &, so far as any bonds that have come into my hands,
314 I can answer to you, to your satisfaction, but I shall not do so to Lewis.

Don't fail to come here immediately. Lewis & Davis have already raised more money on the bonds which you left with them than you are probably aware of.

I write to you requesting that you would not close any arrangements with them until you could see me.

The reason that I did not go out with them to your place was because I was informed that they would go with Jameson, and some other reasons that I will give you when I see you. My child at the time they left was quite unwell; but if they had left other matters in proper shape I should have been in Fairfield as soon as they reached there. I think Mr. Davis has full control over Lewis. Lewis gives him as many bonds as he asks for to raise money for his & Lewis' individual expenses. These things I name to you confidentially, and only ask you to come here and examine everything for yourself.

315 If you cannot come here immediately, please telegraph, and I will give further particulars, and also send you my a/c with the company. I thank you for believing, as you say in your letter, that I can show everything right. I can do so. The statement that Lewis made to you about my offering the bonds which he gave to me for real estate was not true. I never made any offer of the kind. I will explain that matter when I see you.

I repeat, do come here as soon as possible.

Yours, very truly,

IRA HERSEY.

P. S.—Please send me, unless you come on immediately, a full account of the agreement made for extension of the R. R. through Edwards & Wabash. I suppose it to be in accordance with agreement made between yourself, Lewis, Davis, & myself when you was here.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

316 *Wilson to Lewis.*

FAIRFIELD, *Aug't* 27, '60.

Mr. CHAS. W. LEWIS:

DEAR SIR: I hereby authorize you to use the Mt. Vernon R. R. Co. bonds now in your possession deposited by me for the purpose of building a railroad through Wayne County; to use said bonds for the procuring & forwarding of the St. Louis & Louisville Railroad. As the Mt. Vernon Co. cannot proceed with their line, the St. Louis & Louisville Road will be the only road we can have to pass through our county, and thereby be the only means of benefiting the same.

Yours, truly,

S. J. R. WILSON.

Copy of original.

CHAS. W. LEWIS.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Lewis to Judge.

317 MY DEAR JUDGE: Will you please have a conversation with Mr. Davis to see how far it will be necessary to have Mr. Hersey know of our arrangements now being made without Mr. H.'s knowledge?

Yours,.

C. W. LEWIS.

I may be detained & not return before you go up *cest.*

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

Hersey to Wilson.

NEW YORK, *Aug't 10th*, 1'60.

Judge WILSON:

MY DEAR FRIEND: I wrote to you yesterday & now write further news of the day. Mr. Lewis & Mr. Davis left yesterday for Mt. Vernon. Mr. Jameson left yesterday to for same place. To-day Vanduzer, to my surprise, called at my office and informed me that he had rec'd a full acc't from Lewis, and that Lewis had given him up all his notes which had been given for goods. Thus you see how far I have
318 been imposed upon by D. & L., as they both pretended to me that they would arrest Van. & sell his stock, &c.; also that they would not do anything with Jameson, (as they wrote to you,) and then the next I hear, that they are all friends & are working together.

Now I am sadly disappointed, and as I cannot leave home (my child being very sick) I must request that you do nothing in any arrangement that Davis & Lewis may propose until you can see me. I will try any time next week to meet you at Logansport, (if my little girl should be better,) & what I wrote to you you will please keep as strictly confidential. I will not knowingly deceive you, and I do not now say that L. & Davis will not do as they agreed, but I must say they have not done by you as they agreed about the goods, & by me as they promised, therefor' do nothing more about contract with Edwards & Wabash until you see me. Write to me by return mail, & if I can leave home I will telegraph when to meet me.

Yours, very truly,

IRA HERSEY.

(Endorsed:) Filed June 12, 1874. J. A. Jones, clerk.

319 *Kendrick to Wilson.*

NEW YORK, *Aug't 3*, '60.

S. J. R. WILSON, Esq.:

DEAR SIR: As per your request, I undertake to give you the movements of the parties opporating with the bonds of the Mount Vernon R. R. Co. In the first place, I understand Lewis agreed to purchase a bill of goods for your, which he has undertaken to do, and so far succeeded in purchasing a small portion of them on the companie's note, with the bonds as collateral. From enquiries, I find Mr. Lewis does not stand as well as to responsibility as was represented, and I think it difficult for him to make the purchases.

I am sorry you consented to go into the last arrangement. The bonds, as I wrote you before, should not *of* been taken out of Mr. Seymour's hands. Lewis, Hersey, & Davis, I understand, are in the market trying to dispose of the bonds for goods, &c., and if things are supposed to go on in this way the bonds will all be disposed of or hypothecated and nothing to build the road with. There should be steps taken immediately to stop the opporations of Mr. Lewis, and call him as well
320 as all others and have a settlement made in a business-like manner, & I propose for all to meet at Mount Vernon for that purpose. I leave for home on Monday, & would like for you to write me at Logansport, and write me fully what you think of the whole matter. I think you are deceived in Mr. Lewis. Mr. Davis I know nothing about. He appear' to be the adviser of Mr. Lewis, and I think their opporations will end in a mixed up mess, much worse than Vanduzer, Smith & Co.

Yours, truly,

S. B. KENDRICK.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clk.

Kendrick to Wilson.

ST. NICHOLAS HOTEL,
New York, Aug. 1, '60.

S. J. R. WILSON, Esqr.:

DEAR SIR: I arrived here Sunday last, & found your letter of July 10th. In answer would say I have seen Mr. Hersey & Mr. Lewis. I can't learn much from them. They tell me they intend to go to
321 Fairfield in a short time, for the purpose of making some arrangement to go on & build the road.

Mr. Lewis tells me he has written you fully on the subject, which I suppose will explain all about the delay you spoke of in your letter to me of the 10th.

I understand also, by Mr. Hersey, that you placed all the bonds in the hands of Mr. Lewis. Perhaps it will be all right, but I think the proper place for them was in the hands of Mr. Seymour, the trustee. Mr. Lewis is a stranger to all, & I can't see the object in placing so much in hands without any security. From what I have seen of Mr. Lewis I should take him to be a fair man and may do right. You thought the same of the other parties, and you see the trouble they have brought round.

From what I can learn from Mr. Lewis I think he intends to make an effort to build the road, or to get things in a shape so he can raise money on the bonds. The question as to his selling the bonds and receiving the money, without giving security to the company, is whether the money will be properly applied. I think the bonds should *of*
322 been left in the hands of Mr. Seymour, or kept by yourself as the agent of Wayne County, and, when sold, the proceeds properly applied. It may all come out right; I hope it may; but it is not the proper way to do the business.

I think it would be well to call a meeting of the directors when Mr. Lewis & Mr. Hersey *goes* out, and have all matters fully adjusted, and find out if possible how the matter stands, and hereafter do the business as business men; you can't expect to build the road unless some such course is taken.

From what I can learn I think Mr. Lewis prefers to go to your place without having any one else along, and I merely make these remarks so you may act in the matter understandingly.

I wish you would write me more fully how the whole matter stands, and if I learn anything more before I leave, I will write you.

Write to me at Logansport, Ind.

Yours, truly,

S. B. KENDRICK.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

323 *Vanduzer to Wilson.*

NEW YORK, *May the 14th*, 1861.

Friend WILSON:

DEAR SIR: In accordance with my agreements with you & all parties, I went to see Elting's lands & found *them* no one. I then came on here & found him & Hersey all right; but is just as I expected, he, Elting, wants the surveys for the whole fifty bonds before he is willing to settle the whole thing up. He is willing to put the surveys & bonds in

the hands of some disinterested parties, & I think the best thing to do is for you to send them on immediately. Please make them out all straight, that there will be no more trouble. I had an offer to trade the team for a machine for you; the machine is in Elmira, & I will go & see it as soon as I return to Waverly. Please answer at Waverly as soon as you get this. Your interest shall be protected. Nothing new, only I saw your friend in Green street, & she sends the best respects to you & expects you on soon.

Yours, truly,

J. T. VANDUZER.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

324 *Motion to reject proof before master.*

U. States circuit court southern district of Illinois.

JOHN W. KENNICOTT AND OTHERS *agst.* THE MT. VERNON RAILROAD COMPANY AND the Board of Supervisors of Wayne County, Illinois. } Chancery.

In the ma ters' office:

The defendant, the Board of Supervisors for the county of Wayne, moves the master to reject and report against the allowance of any bonds or coupons filed in the name of and *by* the property of John W. Kennicott, Cyrus Wakefield, or Francis E. Parker, William B. Bacon, admrs., & Elizabeth Wakefield, admx., of said Cyrus Wakefield; William P. Emerson, Joseph Smith, J. Sargent Smith, Eben W. Stone, Arthur M. Gould, John J. Dinwell, Henry V. Davis, John L. Priest, William C. Plunkett, Joseph Burnett, William L. Rolston, Andrew H. Ward;

And for cause assigns—

1. That there is no proof of the ownership of said bonds and coupons by said parties or any of them.

325 2. There is no proof of the execution of, or the signatures to, or the genuineness of any of the said bonds or coupons, or any of them.

3. There is no proof that there was any consideration paid by said parties or any of them for said bonds or coupons or any of them.

4. There is no proof that the said bonds and coupons were purchased in good faith or for value by any of said parties.

5. There is no proof that the said bonds or coupons or any of them were purchased by the said parties or any of them before the same were dishonored.

6. Because the proof shows that the said bonds and coupons were originally fraudulently issued, and the said parties have not nor have any of them accounted for any possession by them in good faith and for value.

7. Because the said proof shows there should not be any recovery in equity upon the said bonds and coupons, or any of them, on the proof as made.

For all which reasons this defendant prays the master to expunge the said proof and report against the same.

KNAPP, FREEMAN & CO.,
Solicitors.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

326 *Motion No. 2, to reject proof before master.*

Circuit court of the United States southern district of Illinois.

JOHN W. KENNICOTT ET AL.
agst.
THE MT. VERNON RAILROAD COMPANY & THE Board of Supervisors of Wayne Co. } Chancery.

In the master's office:

The defendant, the Board of Supervisors for the county of Wayne, move' the master to reject and report against the allowance of any bonds or coupons filed in the name or on behalf of as the property of Henry Fuller, Cyrus Wakefield, Wm. P. Emerson, William R. Rolston, John J. Dinwell, Isaac Tayler, Joseph Burnett, William C. Plunckett, Joseph Smith, John W. Kennicott, John L. Priest, Eben W. Stone, John S. Smith, Henry V. Davis, Andrew H. Ward;

And for cause assigns—

1. That there is not s fficient proof of the ownership of said bonds or coupons or any of them.

2. There is no proof of the execution of or signatures to said
327 bonds or coupons or any of them, or of the genuineness thereof.

3. There is no proof whatever that there was any consideration paid by said parties or any of them for said bonds and coupons or any of them.

4. There is no proof that their said bonds or any of them were purchased in good faith and for value by any of said parties.

5. There is no proof that the said bonds and coupons or any of them were purchased by the said claimants or any of them before the same were dishonored.

6. Because the proof shows that the said bonds and coupons were originally fraudulently paid, and the said parties have not nor have either of them accounted for any possession of them for value and in good faith.

7. Because the proof shows that the said bonds and coupons were all purchased by said parties representing them in bad faith.

8. Because the proof shows the bonds and coupons were purchased after the same were dishonered, and with full notice therefor of their original fraudulent issue.

328 9. Because the proof shows that the said claimants paid no value for said bonds.

10. Because the proof shows that the said bonds were fraudulently and surrepti'ously issued, and no proof has been produced to show the amount of recovery to be allowed thereupon, even if the present claimants had purchased them in good faith and for value.

For all which reasons this defendant prays the master to expunge the said proofs and report against the said claims and each thereof.

A. L. KNAPP,
N. L. FREEMAN,
H. CRAWFORD,
Solicitors.

Motion No. 3 to reject proof before master.

Circuit court of the United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
agst.
THE MT. VERNON RAILROAD COMPANY & THE Board of Supervisors of Wayne County. } Chancery.

In the master's office:

329 The defendant The Board of Supervisors of the county of Wayne moves the master to reject and report against the allowance of any bonds or coupons filed in the name of or in behalf or as the property of William R. Hodges, John H. Brown, the executors of Morris J. Earl, Austin Meyer or Maria Myers, his admx., Joseph W. Ward, Richard P. Glenn, and Hamilton J. Sprayberry, Henry Fuller, Wed W. Clarke, John H. Brown, Messrs. McMartin & Alexander, Isaac Taylor, Nathaniel H. Streeter, Jno. L. Bleakley, H. N. Holden, Ammidour, Lane & Co., Ransom & Geer, Roxana Crego, Herman Powers, Arthur F. Gould;

And for cause assigns—

1. That there is not sufficient proof of the ownership of said bonds or coupons or any of them.

2. There is no proof of the execution of or signatures to said bonds or coupons or any of them, or of the genuineness thereof.

3. There is no proof that there was any valuable consideration paid by said parties or any of them for said bonds and coupons or any of them.

4. There is no proof that the said bonds and coupons or any of
330 the*n* were purchased in good faith and for value by any of said parties.

5. There is no proof that the said bonds and coupons or any of them were purchased by the said parties, or any of them, before the same were dishonered.

6. Because the proof shows that the said bonds and coupons were originally fraudulently issued, and the said parties have no*r*, nor have any of them, accounted for any possession of them by them in good faith and for value.

7. Because the proof shows that the said bonds and coupons were all purchased by said parties representing them in bad faith.

8. Because the proof shows the bonds and coupons were purchased after they were dishonered and with full notice of the original fraudulent issue.

9. Because the proof shows that the said parties paid no value for said bonds and coupons.

10. Because the proof shows that the said bonds were fraudulently and surreptitiously issued, and no proof has been adduced to
331 *them* the amount of recovery to be allowed thereupon, even if the present parties had purchased them in good faith and for value.

11. As to the said Brown, that he is estopped by the first decree of the circuit court, he never having appealed therefrom.

For all which reasons this defendant prays the master to expunge the said proofs and report against the said claims and each thereof.

A. L. KNAPP,
N. L. FREEMAN,
H. CRAWFORD,
Solicitors.

(Indorsed:) Filed June 12, 1874. J. A. Jones, clerk.

332 Then afterwards, to wit, on the thirteenth day of June, in the year last aforesaid, came again said complainants, by their solicitors, and filed in said clerk's office their amended bill herein; which said amended bill is in the words and figures following, to wit:

Amended bill.

Amended bill filed June 1, 1874, to the amended bill filed July 7th, 1870, by attaching the following to the said amended bill, that is to say:

Your orators, Isaac Taylor, a citizen of the State of Massachusetts, Warren A. Randsom, Aaron P. Ransom, Darius W. Geer, & Robert H. Boyd, doing business as bankers, under the name, style, and firm of W. A. Ransom & Co., in the city of Boston, Massachusetts, and each member of said firm residing in and being a citizen of the State of Massachusetts; Edward H. Ammidown, J. Henry Lane, trading & doing business
333 under the name, style, & firm of Ammidom, Lane & Co., in the city of New York, State of New York, and each member of said firm being a resident in and a citizen of the State of New York; Archibald McMartin and Henry M. Alexander, executors of the last will & testimont of Peter McMartin, deceased, both of whom have accepted said trust & qualified as such executors, and both residents in & citizens of the State of New York; Horatio N. Holden, a resident in & citizen of the State of New York; Wed W. Clarke, a resident in and citizen of the State of New York; Roxanna Crego, a resident in & citizen of the State of New York; Harmon Bowers, a resident in & citizen of the State of Massachusetts; Nathaniel Streetor, a resident in and citizen of the State of Minnisota, now here interpleading as cocomplainants in this case, by leave of the court first duly granted to them, would respectfully represent that Isaac Taylor is the bona-fide holder & owner of the following bonds, with the interest-coupons thereto, viz:
334 bonds for $1,000 each, numbered 23, 29, 282, 283, 284, 285, 286, 353, 354, 355, & 394, also bonds for $500 each, numbered 78, 115, & 116, and upon which interest remains due for the past fifteen years, & is still unpaid, and that said Taylor purchased said bonds for a valuable consideration, bona fide, paid, & in the ordinary course of trade & business in such securities.

Your orators would further represent that Warren A. Ransom & Co. are the bona-fide holders & owners of the following bonds, with the interest-coupons thereto attached, viz: bonds for $1,000, numbered 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, and upon which interest remains due & unpaid for the past fifteen years; and that said W. A. Ransom & Co. purchased said bonds bona fide, in the usual course of trade in such securities and for a valuable consideration.

Your orators would further represent that Ammidom, Lane & Co. are the bona-fide holders and owners of the following bond, with attached coupons, viz, bond numbered 331, for $1,000, and upon which
335 interest remains due & unpaid for the paid fifteen years, and that said Ammidom, Lane & Co. purchased said bond bona fide for a valuable consideration, in the due & ordinary course of trade & business in such securities.

Your orators would further represent that Archibald McMartin & Henry M. Alexander are the lawful executors, duly nominated, qualified, & acting as such under the last will & testament of the late Peter McMartin, now deceased, and that, as such executors, they are the bona-fide holders & owners of the following bonds for $1,000 each, with the interest-coupons thereto attached, viz: bonds numbered 253, 255, 275, and also the following bonds for $500 each, numbered 96, 104, 109, 269,

and 270, and upon which interest for the past fifteen years remains due & unpaid, and that said Peter McMartin in his life-time purchased said bonds bona fide for a valuable consideration in the usual course of trade in such securities.

Your orators would further represent that Horatio N. Holden is the bona-fide holder & owner of the following bond, with the attached
336 coupons, viz, bond numbered 304, for $500, and upon which interest remains due & unpaid for the past fifteen years, and that the said Holden purchased said bond bona fide for a valuable consideration and in the due & ordinary course of trade & business in such securities.

Your orator would further represent that Roxanna Crego, widow, is the bona-fide holder & owner of bond, with attached coupons, numbered 278, for $500, and upon which interest remains unpaid for the past fifteen years, & that *that* the said Crego purchased said bond bona fide for a valuable consideration in the usual & ordinary course of trade & business in such securities.

Your orators would further represent that Wed. W. Clarke is the bona-fide holder & owner of the following bonds & attached coupons, viz, bonds for $1,000 each, numbered 135, 297, 298, 300 & 399, and bonds for $500 each, numbered 72, 73, 81, 82, 83, 84, 86, & 89, and upon which interest remains due & unpaid for the past fifteen years, and that said Clarke purchased said bond bona fide for a valuable consideration in the ordinary & usual course of business & trade in such securities.

Your orators would further represent that Herman Powers is
337 the bona-fide holder and owner of the following bond, with attached coupons, viz, bond No. 22, for $500, and upon interest remains due and unpaid for the past fifteen years, and that said Powers purchased said bond bona fide for a valuable consideration, & in the ordinary & usual course of dealing in such securities.

Your orators would further represent that Nathaniel H. Streeter is the bona-fide holder and owner of the following bonds and attached and detached coupons for $1,000 each, numbered 16, 17, 27, with 3 coupons detached & re-attached to each of said bonds, as als' divers undetached coupons, and upon which interest remains due and unpaid for the past fifteen years, and that said Streeter purchased said bonds bona fide for a valuable consideration, and in the usual and ordinary course of trade & dealings in such securities.

Your orators hereby offer to pay respectively their pro rata of costs, expenses, & solicitors' fees allowed by the court, & thereupon pray to be admitted as co-complainants.

Your orators pray that, upon the final hearing herein, your hon-
338 ors will order, adjudge, and decree that an account be taken of the respective amounts due to your orators on said bonds & interest-coupons, all of which, principal & interest, remains due & unpaid; and your orators join in all the prayers for relief set forth in the original & amended bills filed in this cause by their co-complainants; and your orators would further pray that interest be computed & allowed your orators upon the interest-coupons from the times they respectively became due & payable until final decree may be rendered in the premises, and that they be allowed their reasonable costs & solicitors' fees and such other & further relief as to equity & good conscience may appertain.

As in duty they will ever pray.

WALTER B. SCATES,
Solicitor for Complainants & Co-complainants.

(Indorsed:) Filed June 13, A. D. 1874. J. A. Jones, clk.

339 Then afterwards, to wit, on the nineteenth day of said June, of the year last aforesaid, came again said master in chancery and filed herein his first and second supplemental reports, which said first and second supplemental reports, together with the exhibits therein refer'ed to, are in the words and figures following, to wit:

1st supplemental rep't of master.

In the circuit court of the United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY impleaded with Mount Vernon Railroad Company. } Chancery.

The first supplemental report of John A. Jones, master in chancery of said circuit court, to whom this cause was referred, as stated in his original report, bearing date June 12th, A. D. 1874, and heretofore filed herein.

340 Said master reports that the following-named persons, by Samuel J. Crooks, esq., their solicitor, introduced in evidence, by petitions duly verified, certain bonds and coupons of the Mount Vernon Railroad Company. The total face-value of such bonds and coupons is set opposite the names of the persons so holding them, respectively. (For statements of amounts in detail, reference is hereby made to exhibits herewith filed, marked from No. 32 to No. 43, inclusive, and made part of this report.)

Hosea Birdsall	$52,080 00
Lucius F. Reed	22,832 50
Clark L. Potter	65,982 50
Joseph Wanelbaum	1,945 00
James O. Faircloth	17,277 50
Caleb Underhill	5,870 00
James S. Hendrickson	9,725 00
Oliver D. Taylor	14,692 50
Benjamin Wise	9,795 00
James F. Hendrickson	11,880 00
Thompson E. F. Randolph	9,900 00
William C. Potter	1,085 00
	$223,065 00

341 To the admission of all which petitions, bonds, and coupons the defendants, by their solicitors, then and there excepted.

All which is respectively submitted. June 19, 1874.

J. A. JONES,
M. C. U. S. C. C. S. D. Ills.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

2d supplemental report of master.

In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois, impleaded with the Mount Vernon Railroad Company. } Chancery.

Supplemental report of John A. Jones, master in chancery of said court and by consent of parties, by their solicitors, to be made part of the said master's report bearing date May 12, 1874.

342 Said master further reports that the complainants offered in evidence the testimony produced on the hearing, and the bonds and coupons mentioned in the original and amended bill of complaint herein, and that said complainants in addition to that recited in the original report introduced in evidence the following testimony, the examination of John H. Brown and John W. Kennicott; to which the defendants, by their counsel, at the time excepted.

Said master also reports that the testimony in this and the original report was all that was introduced on the hearing by either party.

June 19, 1874.

J. A. JONES,
M. C. U. S. C. C. S. D. Ills.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Hosea Birdsall.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois, in chancery:

The petition of Hosea Birdsall respectfully shows that your
343 petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase in the ordinary course of business, for a valuable consideration paid by him therefor, of thirty-eight of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, eleven of which are of the denomination of one thousand dollars, bearing the numbers 26, 146, 294, 334, 335, 455, 500, 516, 571, 577, and 578, together with the coupons or interest-warrants thereto attached, 5 with twenty-seven, 5 with *with* twenty-eight, and one with twenty-six of such coupons so thereto attached, and of which twenty-seven are of the denomination of five hundred dollars, each bearing the numbers of 29, 35, 66, 69, 76, 77, 110, 111, 117, 218, 259, 261, 262, 263, 264, 267, 271, 283, 284, 291, 292, 293, 296, 398, 399, 300, and 397, with the coupons or interest-warrants thereto attached, twenty-five with twenty-seven each, one with twenty-eight, and one with twenty-six so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, and those so attached to the bonds of the denomination of $500 call for the payment of seven-
344 teen $\frac{50}{100}$ dollars, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874.

And your petitioner further states that he is the bona-fide owner, by purchase in the usual course of trade, of ninety coupons detached from bonds of like description, payable in 1860, for thirty-five dollars each, and seven coupons detached from bonds of like description, payable in 1861, for thirty-five dollars each, and forty-six coupons detached from bonds of like description payable in 1860, for seventeen $\frac{50}{100}$ dollars each, and five coupons, also detached, payable in 1861, for seventeen $\frac{50}{100}$ dollars each, which coupons are numbered on the face thereof in red, 2, 3, 4, and 5; forty-four of which are so numbered 2; forty-six, 3; seven, 4, being for the payment of $35 each; and forty-six of which are so as aforesaid numbered 3; four, 4; and one, 5; and are for the payment of $17.50 each; that the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the
345 office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court wherein John W. Kennicott and others are complainants against the Board of Supervisors of Wayne County, in said State of Illinois, and others are defendants, providing, amongst other things, that bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted upon the terms and conditions specified in such order and decree to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to show in the fruits and benefits of the final decree to be made and entered by the said court in the said cause, upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honor, your petitioner now comes producing the said bonds with the coupons thereto attached as aforesaid, and prays that your honor will so modify the present decree so entered in said cause as aforesaid, as to afford your petitioner thereby the time,
346 place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons, and that your honor will make such further order or decree in said cause as will admit your petitioner as a party to the record therein and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honor in said cause.

And your petitioner will ever pray, &c.

HOSEA BIRDSALL.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Hosea Birdsall, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

HOSEA BIRDSALL.

Sworn to before me this 3d day of June, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

347 (Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Hosea Birdsall.

5×27=135 5×28=140 1×26= 26	11 $1,000 bonds, Nos. 26, 146, 294, 334, 335, 455, 500, 516, 571, 577, & 578	$11,000 00
	301 coupons attached to bonds, @ 35 ea	10,535 00
	Interest on coupons to May 1, 1874	4,168 50
	Total	25,703 50
15×27 1×26 1×28	27 bonds, $500.00, Nos. 29, 35, 66, 69, 76, 77, 110, 111, 117, 218, 259, 261, 262, 263, 264, 267, 271, 283, 284, 291, 292, 293, 296, 398, 399, 300, 397	13,500 00
	729 coupons attached to bonds, 17.50	12,757 50
	Interest on 729 coupons to May 1, 1874	4,975 83
	Total	31,233 33
	49 detached coupons, due May 1, 1860, @ $35	1,715 00
	Interest on same	1,440 60
	Total	3,155 60
	48 detached coupons, due Nov. 1, 1860, @ 35 ea	1,680 00
	Interest on same	1,360 80
	Total	3,040 80
	47 detached coupons, due Nov. 1, 1861, @ 17.50 ea	822 50
	Interest on same	616 87
		1,439 37
348	4 detached coupons, due May 1, 1861, @ $17.50	70 00
	Interest on same	54 60
		124 60
		25,703 50
		31,233 33
		3,155 60
		3,040 80
		1,439 37
	Total	64,697 20

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of L. F. Reed.

To the honorable the judges of the circuit court of the United States, within and for the southern district of Illinois. In chancery.

The petition of Lucius F. Reed respectfully shows that your petitioner is a resident of the State of New York.

That your petitioner is a bona-fide owner, by purchase in the ordinary course of business, for a valuable consideration paid by him

therefor, of fourteen (14) of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, ten of which are of the denomination of one
349 thousand dollars, bearing the numbers 292, 497, 498, 515, 517, 518, 519, 520, 557, & 575, together with the coupons or interest-warrants thereto attached; three with twenty-six and seven with twenty-seven of such coupons so thereto attached, and of which four are of the denomination of five hundred dollars each, bearing the numbers of 273, 389, 392, & 393, with the coupons or interest-warrants thereto attached; three with twenty each, and one with twenty-five so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, and those so attached to the bonds of the denomination of $500 call for the payment of seventeen $\frac{50}{100}$ dollars, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said
350 court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennecott and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing, amongst other things, that bona-fide holders of all such bonds for value not being parties by name to the record in said cause might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now may it please your honors your petitioners now comes producing the said bonds with the coupons thereto attached as aforesaid, and prays that your honor will so modify the present decree so entered
351 in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioners will ever pray, &c.

L. F. REED.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Lucius F. Reed, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

L. F. REED.

Sworn to before me this 28th day of May, 1874.

[L. S.] JOHN A. SHIELDS.

352 *U. S. Commissioner S. D. of N. Y.*

Samuel J. Crooks, solicitor for petitioner, 170 Broadway, city of New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of L. F. Reed.

10 $1,000.00	bonds, Nos. 292, 497, 498, 515, 517, 518, 519, 520, 557, 575	$10,000 00
3x26= 78 7x27=189	267 coupons attached to bond, @ 35 ea	9,345 00
	Interest on coupons to May 1, 1874	3,603 60
		22,948 60
	4 $500.00 bonds, Nos. 237, 389, 392, & 393	$2,000 00
3x20=60 1x25=25	85 coupons attached to bonds, @ 17.50	1,487 50
	Interest on coupons to May 1, 1874	456 75
		3,944 25
		22,948 60
	Total	26,892 85

(Indorsed:) Filed June 19, 1874. J. S. Jones, clerk.

353 *Petition of Clark L. Potter.*

To the honorable the judges of the circuit court of the United States, within and for the southern district of Illinois. In chancery.

The petition of Clark L. Potter respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of forty-three of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, twenty-six of which are of the denomination of one thousand dollars, bearing the numbers 261, 401, 262, 263, 511, 499, 106, 324, 252, 10, 107, 124, 128, 379, 287, 581, 580, 503, 127, 504, 444, 453, 126, 505, 68, and 129, together with the coupons or interest warrants thereto attached; eleven with twenty-six, eleven with twenty-seven, three with twenty-eight, and one with nineteen of such coupons so thereto attached, and of which seventeen are of the denomination of five hundred dollars each, bearing the numbers of 125, 124, 123, 122, 121, 129, 128, 127, 381, 224,
354 388, 31, 225, 258, 265, 133, and 382, with the coupons or interest-warrants thereto attached; eight with twenty-eight, two with twenty-seven, four with twenty, two with twenty-six each, and one with seventeen so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, and those so attached to the bonds of the denomination of $500 call for the payment of seventeen $\frac{50}{100}$ dollars, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter and order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennecott and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others
355 are defendants, providing, amongst other things, that bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and con-

ditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause, upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now may it please your honor, your petitioner now comes producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding
356 and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

CLARK L. POTTER.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK:

Clark L. Potter, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

CLARK L. POTTER.

Sworn to before me this 10th day of June, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

357 Sam'l J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Clark L. Potter.

26 $1,000.00 bonds, Nos. 127, 129, 126, 580, 581, 287, 579, 128, 124, 107, 252, 505, 68, 504, 444, 453, 503, 261, 401, 262, 263, 511, 499, 106, 324, 10	$26,000 00
11×26=286 11×27=297 3×28= 84 1×19= 19 — 683 coupons, attached to bonds, @ $35.00 ea.	24,010 00
Interest on coupons to May 1, 1874	7,987 55
Total	57,997 55
17 $500.00 bonds, Nos. 382, 133, 265, 258, 225, 31, 388, 224, 381, 121, 122, 129, 128, 127, 125, 124, 123	8,500 00
8×28=224 2×27= 54 4×20= 80 2×26= 52 1×17= 17 — 427 coupons, attached to bonds, @ 17.50	4,472 50
Interest on coupons to May 1, 1874	2,839 20
	18,811 70
	57,997 25
Total	$76,809 25

358 (Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Joseph Waxelbaum.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

The petition of Joseph Waxelbaum respectfully shows that your petitioner is a resident of the State of New York.

That your petitioner is a bona-fide owner by purchase in the ordinary course of business, for a valuable consideration paid by him therefor, of one of the construction-bonds issued by the Mt. Vernon Railroad Company, dated of the 20th day of April, A. D. 1859, of the denomination of one thousand dollars, bearing the number forty-six, (46,) together with the coupons or interest-warrants thereto attached with twenty-seven of such coupons so thereto attached.

That said coupon' so attached to the bonds of the denomina-
359 tion of $1,000 call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874. That the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennecott and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others are defendants; providing, amongst other things, that bona-fide holders of all such bonds for value not being party by name to the record in said cause might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same, before John A. Jones, esq., master in chancery of the said court, and be
360 allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now may it please your honors, your petitioner now comes producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree, so entered in said cause as aforesaid, as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons, and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made, or hereafter to be made and entered by your honors in said cause.

361 And your petitioners will ever pray, &c.

JOSEPH WAXELBAUM.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Joseph Waxelbaum, being duly sworn, deposes and says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

JOSEPH WAXELBAUM.

Sworn to before me this 27 day of May, 1874.
[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

362 *Abstract of bond & coupons of Joseph Waxelbaum.*

1 $1,000.00 bond, No. 46	$1,000 00
27 coupons attached, @ 35 ea	945 00
Interest on coupons May 1, 1874	368 55
Total	2,313 55

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of James O. Faircloth.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

The petition of James O. Faircloth respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner, by purchase in the ordinary course of business, for a valuable consideration paid by him therefor, of thirteen of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, five of which are of the denomination of one thousand dollars, bearing the numbers 506, 510,
363 509, 508, and 507, together with the coupons or interest-warrants thereto attached, one with twenty-seven and four with twenty-eight of such coupons so thereto attached, and of which eight are of the denomination of five hundred dollars each, bearing the numbers of 130, 219, 260, 65, 30, 64, 297, and 207, with the coupons or interest-warrants thereto attached, five with twenty-seven each and three with twenty so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, and those so attached to the bonds of the denomination of $500 call for the payment of seventeen $\frac{50}{100}$ dollars on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the
364 clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others are defendants, providing, amongst other things, that bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as

the said court may incorporate therein, as by reference to said decree will more fully and at length appear.

Now, may it please your honors, your petitioner now comes, producing the said bonds, with the coupons thereto attached as aforesaid,
365 and prays that your honors will so modify the present decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees herteofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

JAMES O. FAIRCLOTH.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

James O. Faircloth, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

JAMES O. FAIRCLOTH.

Sworn to before me this 29' day of May, 1874.

366 [L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Sam'l J. Crooks, sol'r for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of James O. Faircloth.

28×4=112 27×1= 27	5 $1,000 bonds, Nos. 507, 508, 509, 510, 506.....	$5,000 00
—	139 coupons attached, $35 ea	4,865 00
	Interest on coupons to May 1, 1874.....	1,956 15
		$11,821 15
	8 $500.00 bonds, No'. 260, 219, 30, 64, 65, 207, 297,	
5×27=135 3×20= 60	130	$4,000 00
—	195 coupons attached, @ $17.50 ea.....	3,412 50
	Interest on coupons to May 1, 1874	1,220 62
		8,633 12
		11,821 15
	Total....	20,454 27

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

367 *Petition of Caleb Underhill.*

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

The petition of Caleb Underhill respectfully shows that your petitioner is a resident of the State of New York.

That your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of three of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 277, 576, and 582, together with the coupons or interest-warrants thereto attached, two with twenty-seven and one with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874;

368 that the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennecott and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing amongst other things the bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes, producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree so en-

369 tered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

CALEB UNDERHILL.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Caleb Underhill, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

CALEB UNDERHILL.

Sworn before me this 29' day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

370 Saml. J. Crooks, sol'r for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Caleb Underhill.

2 × 27 = 54	3 $1,000.00 bonds, Nos. 277, 576, 582	$3,000 00
1 × 28 = 28	82 coupons attached to bond, $35.00	2,870 00
	Interest on coupons to May 1, 1854	1,134 00
		7,004 00

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of James S. Hendrickson.

To the honorable the judges ot the circuit court of the United States within and for the southern district of Illinois, in chancery.

The petition of James S. Hendrickson respectfully shows that your petitioner is a resident of the State of New York.

That your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of five of the construction-bonds issued by the Mt. Vernon
371 Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 32, 260, 281, 374, and 513, together with the coupons or interest-warrants thereto attached, one with twenty-seven and four with twenty-eight of such coupons so thereto attached. That said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874. That the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others, are complainants against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing, amongst
372 other things, that bona fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now may it please your honors your petitioners now comes producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree so entered in said cause as aforesaid, as to afford your petitioner thereby the time, place, and opportunity to make proofs, as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner
373 as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made, or hereafter to be made, and entered by your honors in said cause.

And your petitioner will ever pray, &c.

JAS. S. HENDRICKSON.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

James S. Hendrickson, being duly sworn, says that he is the petitioner named in, and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

JAMES S. HENDRICKSON.

Sworn to before me this 29 day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commsssioner, S. D. of N. Y.

Sam'l J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

374 *Abstract of bonds & coupons of James S. Hendrickson.*

1×27=27	5 $1,000 bonds, Nos. 260, 513, 374, 32, 281...	$5,000 00
4×28=112	139 coupons, @ $35 ea.....	4,865 00
	Interest on coupons to May 1, 1874.....	1,956 15
	Total.....	11,821 15

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Oliver D. Taylor.

To the honorable the judges of the circuit court of the United States, within and for the southern district of Illinois. In chancery.

The petition of Oliver D. Taylor respectfully shows that your petitioner is a resident of the State of Connecticut.

That your petitioner is a bona-fide owner, by purchase in the ordinary course of business, for a valuable consideration paid by him therefor, of nine of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, six of which are of the denomination of one thousand dollars, bearing the numbers 496, 521, 348, 360, 361, and 433; together with the
375 coupons or interest-warrants thereto attached, one *one* with twenty-six, one with twenty-seven, and four with twenty-eight of such coupons so thereto attached; and of which three are of the denomination of five hundred dollars each, bearing the numbers of 75, 294, and 295, with the coupons or interest-warrants thereto attached, with twenty-seven severally so thereto attached. That said coupons so attached to the bonds of the denomination of $1,000.00 call for the payment of thirty-five dollars each, and those so attached to the bonds of the denomination of $500 call for the payment of seventeen $\frac{50}{100}$ dollars, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874. That the said circuit court for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court, on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott
376 and others are complainants, against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing amongst other things that, bona-fide holders of all such bonds for value, not being party by name to the record in said cause,

might be permitted upon the terms and conditions specified in such order and decree to come and prove their claims under the same, before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now may it please your honors, your petitioner now comes, producing the said bonds with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree so entered in said cause as aforesaid, as to afford your petitioner thereby the
377 time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons. And that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made, or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

O. D. TAYLOR.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Oliver D. Taylor, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

O. D. TAYLOR.

Sworn to before me this 28 day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

378 Sam'l J. Crooks, sol'r for petitioner, 170 Broadway, New York.

(Endorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of O. D. Taylor.

6 $1,000.00 bonds Nos. 496, 360, 361, 521, 348, 433	$6,000 00
1×26= 26 1×27= 27 4×28=112 — 165 coupons attached to bonds, $35.00 ea	5,775 00
Interest on coupons to May 1, 1874	2,297 40
	14,072 40
3 $500.00, Nos. 75, 294, 295	1,500 00
3×27= 81 coupons @ 17.50	1,417 50
Interest on coupons to May 1, 1874	552 82
	3,470 32
	14,072 04
	$17,542 36

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Benjamin Wise.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

379 The petition of Benjamin Wise respectfully shows that your petitioner is a resident of the State of New York.

That your petitioner is a bona fide owner, by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of five of the construction-bonds issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, of the denomination of one thousand dollars, bearing the numbers 502, 522, 512, 373, and 136, together with the coupons on interest-warrants thereto attached; three with twenty-seven and two with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter

380 an order and interlocutory decree, on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others are complainants, against the Board of Supervisors of Wayne County in said State of Illinois, and others, are defendants, providing amongst other things that bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes,

381 producing the said bonds with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons, and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from, and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by, your honors in said cause.

And your petitioner will ever pray, &c.

BENJAMIN WISE.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

Benjamin Wise, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

BENJAMIN WISE.

Sworn before me this 28 day of May, 1874.

382 [L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds and coupons of Be j. Wise.

3 × 27 = 81	5 $1,000.00 bonds, Nos. 502, 136, 512, 373, 522	$5,000 00
2 × 28 = 56	137 coupons attached to bonds, @ $35.00 ea	4,795 00
	Interest on coupons to May 1, 1874	2,296 35
	Total	12,091 35

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of James F. Hendrickson.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

383 The petition of James F. Hendrickson respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of six of the construction-bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 31, 332, 346, 347, 410, and 428, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter an
384 order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others, are complainants against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing amongst other things that bona-fide holders of all such bonds for value, not being by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes,
385 producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present

decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

JAMES F. HENDRICKSON.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

James F. Hendrickson, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that
386 he knows the contents thereof, and that the same is true of his own knowledge.

JAMES F. HENDRICKSON.

Sworn to before me this 29 day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Jas. F. Hendrickson.

6 $1,000.00 bonds, Nos. 346, 31, 332, 347, 410. 428	$6,000 00
6×28 — 168 coupons attached to bonds, @ $35.00 ea	5,880 00
Interest on coupons to May 1, 1874	2,381 40
Total	14,261 04

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Thompson E. F. Randolph.

To the honorable the judges of the circuit court of the United
387 States within and for the southern district of Illinois. In chancery:

The petition of Thompson E. F. Randolph respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase in the ordinary course of business for a valuable consideration paid by him therefor of five of the construction bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 321, 333, 337, 343, and 349, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000, call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof,
388 which was the first day of May, 1874; that the said circuit court

Sworn before me this 28 day of May, 1874.

382 [L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds and coupons of Be j. Wise.

$3 \times 27 = 81$ $2 \times 28 = 56$	5 $1,000.00 bonds, Nos. 502, 136, 512, 373, 522	$5,000 00
	137 coupons attached to bonds, @ $35.00 ea	4,795 00
	Interest on coupons to May 1, 1874	2,296 35
	Total	12,091 35

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of James F. Hendrickson.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

383 The petition of James F. Hendrickson respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of six of the construction-bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 31, 332, 346, 347, 410, and 428, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter an
384 order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others, are complainants against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing amongst other things that bona-fide holders of all such bonds for value, not being by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes,
385 producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present

decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

JAMES F. HENDRICKSON.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

James F. Hendrickson, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that
386 he knows the contents thereof, and that the same is true of his own knowledge.

JAMES F. HENDRICKSON.

Sworn to before me this 29 day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Jas. F. Hendrickson.

6 $1,000.00 bonds, Nos. 346, 31, 332, 347, 410. 428	$6,000 00
$6 \times 28 = 168$ coupons attached to bonds, @ $35.00 ea	5,880 00
Interest on coupons to May 1, 1874	2,381 40
Total	14,261 04

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Thompson E. F. Randolph.

To the honorable the judges of the circuit court of the United
387 States within and for the southern district of Illinois. In chancery:

The petition of Thompson E. F. Randolph respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase in the ordinary course of business for a valuable consideration paid by him therefor of five of the construction bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 321, 333, 337, 343, and 349, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000, call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof,
388 which was the first day of May, 1874; that the said circuit court

Sworn before me this 28 day of May, 1874.

382 [L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds and coupons of Be j. Wise.

3 × 27 = 81 2 × 28 = 56	5 $1,000.00 bonds, Nos. 502, 136, 512, 373, 522	$5,000 00
	— 137 coupons attached to bonds, @ $35.00 ea	4,795 00
Interest on coupons to May 1, 1874		2,296 35
Total		12,091 35

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of James F. Hendrickson.

To the honorable the judges of the circuit court of the United States within and for the southern district of Illinois. In chancery.

383 The petition of James F. Hendrickson respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase, in the ordinary course of business, for a valuable consideration paid by him therefor, of six of the construction-bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 31, 332, 346, 347, 410, and 428, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000 call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southern district of Illinois did make and enter an
384 order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others, are complainants against the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing amongst other things that bona-fide holders of all such bonds for value, not being by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes,
385 producing the said bonds, with the coupons thereto attached as aforesaid, and prays that your honors will so modify the present

decree so entered in said cause as aforesaid as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitioner will ever pray, &c.

JAMES F. HENDRICKSON.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

James F. Hendrickson, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that
386 he knows the contents thereof, and that the same is true of his own knowledge.

JAMES F. HENDRICKSON.

Sworn to before me this 29 day of May, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of Jas. F. Hendrickson.

6 $1,000.00 bonds, Nos. 346, 31, 332, 347, 410. 428	$6,000 00
6×28 — 168 coupons attached to bonds, @ $35.00 ea	5,880 00
Interest on coupons to May 1, 1874	2,381 40
Total	14,261 04

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Petition of Thompson E. F. Randolph.

To the honorable the judges of the circuit court of the United
387 States within and for the southern district of Illinois. In chancery:

The petition of Thompson E. F. Randolph respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner by purchase in the ordinary course of business for a valuable consideration paid by him therefor of five of the construction bonds, issued by the Mt. Vernon Railroad Company, respectively dated of the 20th day of April, A. D. 1859, all of which are of the denomination of one thousand dollars, bearing the numbers 321, 333, 337, 343, and 349, together with the coupons or interest-warrants thereto attached, each with twenty-eight of such coupons so thereto attached; that said coupons so attached to the bonds of the denomination of $1,000, call for the payment of thirty-five dollars each, on the first days of May and November in each and every year up to and including the time fixed in said bonds for the payment thereof,
388 which was the first day of May, 1874; that the said circuit court

for the southern district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others are complainants, *against* the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants; providing, amongst other things, that bona-fide holders of all such bonds for value, not being party by name to the record in said cause, might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered by the said court in the said cause upon such further terms and conditions as the said court may incorporate therein, as by
389 reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes, producing the said bonds with the coupons thereto attached, as aforesaid, and prays that your honors will so modify the present decree so entered in said cause as aforesaid, as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from, and the provisions of all orders and decrees heretofore made or hereafter to be made and entered by your honors in said cause.

And your petitionor will ever pray, &c.

T. E. F. RANDOLPH.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

390 Thompson E. F. Randolph, being duly sworn, says that he is the petitioner named in and who signed the foregoing petition, and that he knows the contents thereof and that the same is true of his own knowledge.

T. E. F. RANDOLPH.

Sworn to before me this 29 day of May, 1874.

L. S. JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Saml. J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of bonds & coupons of T. E. F. Randolph.

5	$1,000 00-bonds Nos. 321, 333, 337, 343, 349.....	$5,000 00
5×28	140 coupons attached to bonds, $35 ea...	4,900 00
	Interest on coupons to May 1, 1874.....	1,984 50
		11,884 50

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

391 *Petition of Wm. C. Potter.*

To the honorable judges of the circuit court of the United States within and for the southern district of Illinois, in chancery.

The petition of William C. Potter respectfully shows that your petitioner is a resident of the State of New York; that your petitioner is a bona-fide owner, by purchase in the ordinary course of busi-

ness for a valuable consideration paid by him therefor, of twenty-four coupons detached from bonds of the denomination of $1,000, (one thousand dollars,) issued by the Mount Vernon Railroad Company, numbered even with the bonds from which they were so detached and numbered in red 2, 3, and 4, and of fourteen coupons detached from bonds of the denomination of five hundred dollars, issued by the Mount Vernon Railroad Company, numbered even with the bonds from which they were so detached and numbered in red "3;" that said coupons, so detached from bonds of the denomination of $1,000, call for the payment of thirty-five dollars each, and said coupons so detached from bonds of the denomination of $500, call for the payment of seventeen $\frac{50}{100}$ dollars each, on the first days of May
392 and November in each and every year, up to and including the time fixed in said bonds for the payment thereof, which was the first day of May, 1874; that the said circuit court for the southeast district of Illinois did make and enter an order and interlocutory decree on Tuesday, February 17th, 1874, which was duly entered with and in the office of the clerk of said court on the 5th day of March, 1874, in the case pending in the said circuit court, wherein John W. Kennicott and others are complainants *against* the Board of Supervisors of Wayne County, in said State of Illinois, and others, are defendants, providing, amongst other things, that bona-fide holders of all such bonds or coupons attached to or detached from said bonds for value, not being party by name to the record in said cause might be permitted, upon the terms and conditions specified in such order and decree, to come and prove their claims under the same before John A. Jones, esq., master in chancery of the said court, and be allowed to share in the fruits and benefits of the final decree to be made and entered
393 by the said court in the said cause, upon such further terms and conditions as the said court may incorporate therein, as by reference to said decree will more fully and at large appear.

Now, may it please your honors, your petitioner now comes, producing the said bonds with the coupons thereto attached, as aforesaid, and prays that your honors will so modify the present decree so entered in said cause, as aforesaid, as to afford your petitioner thereby the time, place, and opportunity to make proofs as a creditor, holding and owning said bonds and coupons; and that your honors will make such further order or decree in said cause as will admit your petitioner as a party to the record therein, and to participate in the benefits to be derived from and the provisions of all orders and decrees heretofore made, or hereafter to be made, and entered by your honors in said cause.

And your petitioner will ever pray, &c.

WM. C. POTTER.

SOUTHERN DISTRICT OF THE STATE OF NEW YORK, *ss:*

William C. Potter, being duly sworn, says that he is the peti-
394 tioner named in and who signed the foregoing petition, and that he knows the contents thereof, and that the same is true of his own knowledge.

WM. C. POTTER.

Sworn to before me this 10 day of June, 1874.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Sam'l J. Crooks, solr. for petitioner, 170 Broadway, New York.

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

Abstract of coupons of Wm. C. Potter.

14 detached coupons, @ 17.50	$245 00
Interest to May 1, 1874	198 45
24 detached coupons, @ $35	840 00
Interest to May 1, 1874	641 55
Total	1,925 00

(Indorsed:) Filed June 19, 1874. J. A. Jones, clerk.

395 *Letter from Whiting to Scates.*

70 WALL ST., N. Y., *April* 25, 1870.

DEAR SIR: About a year since I saw you several times in respect of the Mt. Vernon Railroad foreclosure, and then promised to send you all the bonds possible. I was at that time under large advances to W. C. Potter and others to enable him to purchase and secure bonds for the expressed and ostensible purpose of placing them with you. By a very shameful deceit he procured my money, but has not secured the bonds, and he also involved my own bonds in his action so that I have not been able to control them until now. He has day by day promised and professed his intention to close the matter up. I have now given him up, and am ready now (having my bonds under control) to send them to you if you need them.

I wrote the other day to the executors of Mr. Isaac Seymour for the original certificate given by the county of Wayne and brought by Judge Wilson to me, upon faith of which Mr. Seymour, under my ad-
396 vice, delivered the bonds to Judge Wilson. I will send it to you if I obtain it.

I am, yours, very resp'y,

JOHN M. WHITING.

Hon. SCATES.

(Indorsed:) Filed June 19, 1974. J. A. Jones, clerk.

Afterwards, to wit, on the twenty-second day of June, in the year last aforesaid, came again said defendant, and filed in said clerk's office its motion in writing to reject proofs and disallow bonds presented by Samuel J. Crooks; which said motion in writing is in the words and figures following, to wit:

Motion by defendants to reject proof.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court, June term, A. D. 1874.

JNO. W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al.

397 The defendants, by their solicitors, come & except to the proof of the holding of the bonds presented by Samuel J. Crooks, solicitor for the following-named persons, viz: Hosea Birdsall, Lucius F. Reed, Clark L. Potter, Joseph Waxelbaum, Jas. O. Faircloth, Caleb Underhill, Jas. S. Hendrickson, Oliver D. Taylor, Benjamin Wise, Jas.

F. Hendrickson, Thompson E. F. Randolph, & Wm. C. Potter; & move that the said proofs & said bonds be disallowed, for the reasons following:

1st. That there is no proof of the ownership of said bonds & coupons by said parties or any of them.

2nd. There is no proof that there was any consideration paid by said persons or any of them for said bonds or coupons or any of them.

3rd. There is no proof that the said bonds & coupons, or any of them, were purchased in good faith & for value, by any of said persons.

4th. There is no proof that said bonds or coupons, or any of
398 them, were purchased by said persons or any of them, before the same were dishonored.

5th. Because the proof in the case shows that all said bonds & coupons were originally fraudulently issued, & the said persons & each of them have not shown or accounted for the possession of them or either of them, to have been acquired in good faith & for value.

6th. Because the proof in this case showing the manner the bonds aforesaid got into circulation makes it necessary for persons holding any of said bonds, claiming to be owners thereof, to show by proof sufficient for the purpose, where they acquired said bonds, & upon what consideration; all of which has not been done, or such proof made.

7th. Because the said proof shows that there should not be any recovery on decree herein in equity upon the said bonds & coupons or any of them, upon the proof submitted by said p'rsons & each of them.

399 8th. Because the said bonds, & all of them, were not presented to the master in chancery, of this court, and proof of same made as required or permitted by the interlocutory decree herein entered at the January term last of this court: and as said proof of said bonds is presented, no opportunity has been given said defendants to examine said persons & each of them as to the facts connected with their several holdings of said bonds & their acquisition of the same, & in full. No examination has been or could be made by said defendants.

For all which reasons this defendant prays that all said bonds so presented may be rejected and disallowed.

A. L. KNAPP,
N. L. FREEMAN, AND
HENRY CRAWFORD,
For Defdt.

(Indorsed:) Filed June 22, 1874. J. A. Jones, clerk.

400 *Deposition of J. L. Bleakley.*

In the circuit court of the U. S., southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE CO., IMpleaded with Mount Vernon Railroad Company. } In chancery.

John L. Bleakley personally appeared before me, John A. Jones, master in chancery of said circuit court, on the 29th day of May, 1874, who, being first duly sworn, deposes and says: That I am the holder and owner of the following construction bonds of the Mount Vernon Railroad Company, to wit: No. 362, No. 403, No. 523, & No. 524, of $1,000.00

each. The bonds as exhibited now are in the same condition as when I got them. The coupons also on these bonds are in precisely the same condition as when I got them. I became the owner of these bonds between seven and eight years ago, and have owned them ever since then.

401 I got them of Mr. Potter, in Watt street, and in the office of Oliver D. Taylor. Mr. Potter and Mr. Taylor, I understand, are brokers. My business was a gentleman at large; had no business.

JOHN L. BLEAKLEY.

Mr. Bleakley, being recalled, deposes that he resides at 124 East 83 street, New York City. I first learned of the institution of this suit by publication in the New York Herald, calling on bondholders, not parties heretofore to the suit, to make proof of ownership of bonds before the master in chancery of this court.

JOHN L. BLEAKLEY.

Subscribed and sworn to before me this 29th May, A. D. 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 29, 1874. J. A. Jones, clerk.

402 *Deposition of Henry Fuller.*

In the circuit court of the U. S., southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE CO., IMpleaded with Mount Vernon Railroad Company.

Henry Fuller personally appeared before me, John A. Jones, master in chancery of said circuit court, on the 29th day of March, 1874, who, being first duly sworn, deposes and says: That I am the holder and owner of the following construction bonds of the Mount Vernon Railroad Company, to wit: No. 33 & No. 71 for $500.00 each, and No. 336 for $1,000.00. I got these bonds between seven and eight year' ago from John L. Bleakley. These bonds are in the same condition, with reference to coupons, as when I first got them. I reside at 1296 4th avenue, New York City. My business then and now is that of liquor dealer.

403 I first learned of the institution of this suit by publication in the New York Herald, calling on bondholders, not parties heretofore to this suit, to make proof of ownership of bonds before the master in chancery of this court.

HENRY FULLER.

Subscribed and sworn to before me this 29th May, A. D. 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 29, 1874. J. A. Jones, clerk.

404 *Deposition of S. J. R. Wilson.*

Circuit court of the United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE CO., &C. } In ch'y.

In master's office:

S. J. R. Wilson, being first duly sworn, deposes and says: The letters

herewith shown me, addressed to me—one from Ira Hersey, dated New York, September 3rd, 1860; also from same, dated New York, July 26th, 1860; also from same, August 10th, 1860—are genuine letters, in the handwriting of said Hersey, and received by me in due course of mail; also the following letters from S. B. Kendrick, dated New York, August 1st, 1860; next, August 3, 1860, New York; next dated Logansport, December 22, 1860; next, dated Logansport, March 16, 1861; all in the handwriting of said Kendrick, addressed to and received by me in due course of mail; also 2 letters signed by J. T. Vanduzer, one dated New York, May 14, 1861, and the other New
405 York, May 22, 1861, are in the handwriting of said Vanduzer, and were received by me in due course of mail; also, copy of letter, dated Fairfield, Illinois, August 22nd, 1860, addressed to Charles W. Lewis, which is a true copy of a letter written by witness and sent to Lewis; also, letter dated Dalton, Georgia, October 23, 1860, addressed to Charles Lewis, esq., treasurer M. V. R. R. Co., signed James Morris, is in the handwriting of said Morris, which was sent to me, my recollection is, by Mr. Lewis; also, letter addressed to me, without date, signed by C. W. Lewis, is in the handwriting of said Lewis; think was handed to me in New York City. I am acquainted with the handwriting of the parties writing the various above letters, and know them to be in the handwriting of the parties purporting to write the same.

S. J. R. WILSON.

Sworn to and subscribed before me this 30th May, A. D. 1874.

J. A. JONES, *M. C.*

The solicitors for the defendant offer said letters in evidence,
406 to be read in this case; to all of which the solicitor for the complainants object as being incompetent, irrelevant, and as coming too late in the case.

Defendants also, by their solicitor, offer in evidence the depositions of John N. Whiting, Charles H. Dillingham, Norman A. Smith, Augustus T. Post, and A. W. Beasley, together with the exhibits attached to said depositions, taken in pursuance of a notice attached to said depositions, marked "H," to be read before the said master, as well as on the trial of this cause; to all of which the complainants, by their solicitors, except, alleging that said depositions were taken without competent authority, and are incompetent, irrelevant, and come too late.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

407 EXHIBIT H.

In the circuit court of the United States, in the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE CO., et al. } In chancery. Exhibit H.

To W. B. Scates, S. A. Goodwin, & Jno. A. McClernand, solicitors for compl't:

You are hereby notified that we shall take the depositions of the following-named persons as witnesses on the part of the defendants in the

above-entitled cause, viz: Thos. D. Sherwood, Dorrance Davis, Chas. W. Lewis, John M. Whiting, Thos. Nelson, I. Whipple, A. Beesley, C. H. Dillingham, Geo. Opdycke, & others. Said depositions will be taken on the 22d day of May, A. D. 1874, between 9 o'clock a. m. and 5 o'clock p. m., & continuing from day to day until completed, before Jno. A. Osborn, a United States commissioner, at his office No. 41 Chambers street, in New York City, & when & where you can attend & cross-examine said witnesses, if you see proper; & which depositions we shall read in evidence on the final hearing of said cause.

May 14, 1874.

Yours, &c.

408 ROBINSON, KNAPP & SHUTT,
N. L. FREEMAN,
Solcrs. for Dfdt.

Received copy of this notice May 16, 1874, not waiving objection.
S. A. GOODWIN,
WALTER B. SCATES,
Sol'c'ers for Complts.

United States circuit court, southern district of Illinois.

JOHN W. KENNICOTT ET ALS.
vs.
THE BOARD OF SUPERVISORS OF WAYNE CO., ET AL. } In chancery.

MAY 22ND, 1874.

Pursuant to notice to take depositions of witnesses on the part of defendants, dated May 14, 1874, with receipt of copy of same by solicitors for complainants endorsed thereon, which said notice is annexed hereto, Robert P. Hanna, esq., appeared for defendants, no one appearing for complainants. On application of Mr. Hanna the examination of
409 witnesses was continued by adjournment to Saturday, May 23d, 1874, at one o'clock p. m.

SATURDAY, *May* 23d, 1874.

Pursuant to adjournment, present Robert P. Hanna, esq., for defendants. No one appears for complainants.

The defendants' counsel state that John N. Whiting, a witness for defendants, is present and ready to be examined.

The following is his deposition:

UNITED STATES OF AMERICA:
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending
in the courts of the United States," passed February 20th, 1812,
410 and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'"

passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st. in the city of New York, in the said southern district of New York, in the State aforesaid, John N. Whiting, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott et als., complainants, against The Board of Supervisors of Wayne Co., impleaded, &c., defendants.

Deposition of John N. Whiting.

And the said JOHN N. WHITING, being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of con-
411 troversy aforesaid, I did carefully examine the said John N. Whiting, and he did thereupon depose, testify, and say as follows, viz:

I reside in Orange, New Jersey; am a lawyer, doing business at No. 70 Wall street, New York City, and have been practicing as attorney at law in New York since the year 1856.

Q. Did you know Isaac Seymour in his life-time, and have you any knowledge of a deed of trust, and also of a mortgage, dated in May, 1859, and purporting to be executed to said Seymour by the county court of Wayne County, Illinois?

A. I did know Mr. Seymour in his life-time. I myself drew the deed of trust and mortgage, and witnessed their delivery to Mr. Seymour. I also drew the form of the $800,000 of bonds to secure which the said instruments were made, attended to their being engrossed. Saw Mr. Seymour in the act of countersigning them; was consulted by him as to their delivery to Mr. S. J. Wilson, (I think,) on the requisition of the company. I was Mr. Seymour's counsel in this particular matter.

412 Q. About how long after your first connection with said matter did you, if at all, continue to have any knowledge of the affairs of said Mount Vernon Railroad Company and the said issue of bonds and the lands described in the said mortgage and deed of trust; and state fully and at large whether your knowledge was full and contin'ous, and for how long, or only partial and occasional?

A. After the time referred to in my last answer, I have only a partial and occasional knowledge of the subject referred to in this interrogatory.

Q. Did you know Austin Myers in his life-time?

A. I did.

Q. Where did he reside, and when did your acquaintance with him begin?

A. He resided in Syracuse, I believe; my acquaintance commenced with him about the year 1861 or 1862.

413 Q. Was your acquaintance with him in connection with the matter of the Mount Vernon Railroad Company or otherwise?

A. It was.

Q. State what connection, if any, of an official character he sustained to the Mount Vernon Railroad Company when you knew him?

A. I have no knowledge on that subject. I have an impression that he either was or had been a director of the company.

Q. Did you know William P. Hodges?

A. I did.

Q. When did your acquaintance with him first begin, and where did he then reside?

A. It began some time between 1860 and 1862; he then resided near Patterson, in New Jersey, at a place called Halidon.

Q. Did you also know his brother Chas. A. Hodges?

414 A. I did.

Q. State where he resided at that time.

A. I knew him earlier than I did William. He resided at Haledon.

Q. In what business was the said William P. Hodges engaged, if any, at the time you were acquainted with him from 1860 to 1862?

A. I think the two brothers formed a copartnership, W. R. & C. Hodges, in the spinning of stockings and other wear by machinery, at Haledon, having an office in the city of New York; subsequently they removed their machinery and conducted a factory near 23d street, in the city of New York.

Q. State whether during the period of your acquaintance with William P. Hodges, you had occasion to make enquiry into or become familiar with his financial situation?

A. My recollection generally of my transactions with them is this: In the year 1860, I think, Messrs. Brown Bros. & Co. applied to me

415 in haste one day, having ascertained that a check—whether signed by Charles Hodges individually or by the firm of W. R. & C. Hodges, I have forgotten—drawn on a Patterson bank and delivered to the Browns in payment for foreign exchange, a thousand pounds, was delivered, there being no funds in the bank. I took immediate steps to arrest Charles Hodges criminally, and I immediately commenced a suit in the supreme court of this State for the recovery of the money.

Q. Was that suit for the recovery against Charles Hodges alone?

A. Without referring to the books over there, I cannot state precisely. I recollect that there was also a suit in New Jersey. The defendants to the action pleaded, the suit was tried at the Patterson court-house, judgment was recovered, and immediately after, or soon after, a series of negotiations commenced, growing out of the proceedings, as I now have an impression, to enforce a judgment against the property at Haledon, New Jersey. Messrs. Brown Bros. & Co., through me, had a variety of negotiations, resulting in sales under their judgment

416 and other judgments in favor of other parties, as I now recollect. I think there were also sales under mortgages. I recollect attending several sales at Patterson. Finally, the title to the entire property, or nearly all of it, came into my name as purchaser for the benefit of my clients. I was very frequently at Patterson, and at my first visit at Haledon I was introduced to William R. Hodges by his brother.

Q. What year was that?

A. In 1860 and 1861; it may have been somewhat later; and after that time I had a variety of conversations with him concerning the disposition of the property, and endeavoring to secure the debt for the Messrs. Brown Bros. & Co.

Q. State generally if anything was stated in these conversations as to whether he stated his condition was solvent or otherwise.

A. In the course of those conversations Mr. Hodges talked very freely to me about their pecuniary condition and misfortunes in business, which be imputed to others; and I am able to state, from my investigations into their affairs and the manner in which they conversed

417 with me about them, that he was at that time in an embarrassed situation pecuniarily. I afterwards saw him often in New York, when the same subject was discussed, and in which my convictions on

that subject were confirmed. I saw both the Messrs. Hodges from time to time, in which their condition was often talked about; and their visits became more unfrequent. They wished me to come into their Haledon property, which comprised a very elegant mansion, and occupy it without rent. Subsequently that property was sold under a large mass of mortgages for very much less than the bonds which the mortgages secured. I found that they were very much indebted; they had a great many creditors who turned up in various ways, and, among others, a Mr. Wood, an old gentleman, to whom they had sold the property under their warranty, which his friends had to come forward and buy in for him to save from the mortgages; and owing to the peculiar hardship of his case I became satisfied that the Messrs. Hodges had become utterly irresponsible, if not bankrupt. Still, subsequently, I found a judgement against them in favor of a Mr. Johnson, in New York, which he handed me to collect, and which I did finally collect by means of, as I
418 now remember, suing it over in New Jersey, and selling a portion of the Haledon property in that way. I go into these facts so as to show what my means of knowledge were. I feel no doubt at this time that his pecuniary condition from 1860 to the period at which I last saw him was that of considerable embarrassment. My last interviews with Mr. Hodges have related to his ownership of the Mount Vernon bonds, concerning which I have obtained information from a Mr. Charles W. Lewis, who was at one time the treasurer of the company, as I understood.

Q. In the year 1860 and 1861, and pending those litigations, did this man claim to be the owner of these bonds?

A. No; he did not. At no time did he since claim to be the owner of the bonds, until a period subsequent to 1862 or 1863.

Q. State whether you ever had any interview with William R. Hodges about any claim of ownership upon his part to any of the bonds of the Mount Vernon Railroad Company. If yea, state about what year that was, and, as near as you can now remember, what such claim of ownership by William R. Hodges was, as to when and how he
419 acquired the possession or ownership of such bonds and coupons.

A. I now recollect *from* interviews at least; the first in the year 1862 or 1863, after Mr. Lewis' appointment as secretary, in which Mr. Lewis brought Mr. Hodges to my office, to talk with me about the bonds. The occasion of these interviews, as I recollect, was a suit brought by Mr. Austin Myers, in equity, for specific relief against the Mount Vernon Railroad Company; there was also a suit at law, but the particular grounds of those suits I have forgotten. There was a personal claim made against Mr. Lewis, and he was threatened with other claims affecting his fiduciary relations to the company under his official position, and, as I understood, Mr. Hodges and Mr. Lewis had some relation connected with the transaction complained of, by reason of Mr. Hodges having obtained from Lewis a portion of the bonds of the company, and the consideration thereof having been either attached or involved in these actions or others which were then anticipated. The principal statements were by Lewis. Mr. Hodges was present at some time, and advised with me concerning his position under the circumstances as they had been detailed by Lewis, and perhaps were
420 referred to by him. I think he was represented by a Mr. Sherwood, of the New York bar, and the defence of his branch of the case would more naturally fall under Mr. Sherwood's supervision. My memory on the subject is not full. I understood generally, as I now recollect, from the conversations, that Mr. Hodges had obtained his bonds

from Mr. Lewis, who had them in his custody as treasurer of the company, and that complaint was being made of the transactions between Lewis and Hodges. I don't think I was Mr. Hodges' counsel, and I therefore say unreservedly that he was anxious to retain the possession of the bonds. I do not now recollect whether he then pretended he had bought at their face or had paid any great amount of value for . The impression I got from him at my earlier interviews was that he had obtained his bonds quite recently. I have never given any attention to the subject from that time, and my memory may not be accurate as to dates and times, but upon the subject of his having obtained the bonds within a comparatively recent time at the time of my first conversation with him, I have now little doubt. The other interviews with Mr. Hodges have been since that time. He came to
421 see me at this office, before the first argument in this suit before Judge Treat, at which interview the subject of a union between the bondholders and the course to be adopted in this suit was generally discussed. I made a suggestion to him, which he didn't fall in with. He called upon me twice, and twice with Mr. Lewis, as I recollect, in 1862 or 1863.

Q. At any of the first interviews between yourself and Mr. Hodges was anything said, and, if so, what, as to whether he, in connection with any official of the company, had been out West for the purpose of looking at the land of the Mount Vernon Railroad Company, or the lands included in the mortgage to Seymour?

A. There was. My recollection is that it was stated by all the gentlemen with whom I conversed connected with the business that Mr. Sherwood, the counsel, one or both of the Messrs. Hodges, and Mr. Lewis, the treasurer, had been out in the county of Wayne and seen the lands, and they were spoken of as very fine lands.

Q. State whether from your connection with and knowledge of
422 the affairs of the Mount Vernon Railroad Company, and the bonds issued by it, and purported to be secured by the mortgage or trust-deed to Seymour, you had any knowledge as to what the market-value of such lands were in the city of New York in the year 1860 and subsequently thereto?

A. I don't think they were ever placed upon the market in the sence in which those words are used, in respect to railroad securities. The transactions were purely individual; there was no market-value, as such, for them. I always have felt that they were the subject of purely speculative and, so to speak, irresponsible negotiations—a sort of foot-ball about the market for adventurers and irresponsible people to deal with. I know of no bonds of this company that ever had an inception within what I understand, as a professional man, to be the legal inception of a bond issued by a railroad company for the purpose of construction, equipment, and operation, unless it can be said that the bonds which Mr. Seymour was to receive for his services as trustee, and those that were delivered to me for my services in drawing the papers and
423 advising, can be called so, issued for that purpose, as to which I express no opinion. Ever since the fact that the bonds had been issued in New York has come to my knowledge, I have understood as matter of, I may say, universal report, that those bonds were never issued by the strict corporate authority; that they were never issued for purposes of construction or any other corporate purpose, as I understand the word, and that a species of disgrace has followed their every mention whenever they have come up. They have been regarded as issued for the merest purposes of kiting speculation, or without strict

corporate authority. There may be exceptions, but I have never been advised of any. I have heard of some of the bonds being issued for work done, but I know nothing of those. On reading over my testimony I ought to add that W. R. Hodges, or his firm, had an occupation of some kind during the years 1860 and 1861, the nature of which I did not know, and had a place of business, as I understood, in New York during the whole or part of that time, and their business may
424 have included other business than the factory.

JOHN N. WHITING.

Examination taken, reduced to writing, and subscribed & sworn to before me this 23d day of May, 1874.

JOHN A. OSBORN,
U. S. Commissioner, Southern Dist. of New York.

The further examination of witnesses adjourned to Monday, May 25th, 1874, at nine o'clock in the forenoon.

MAY 25TH, 1874.

Pursuant to adjournment. Present, Robert P. Hanna, for defendants. No one appears for complainants.

The defendants' counsel states that Charles H. Dillingham is present and ready to be examined.

The following is his deposition:

Deposition of Charles H. Dillingham.

UNITED STATES OF AMERICA:
Southern District of New York,
City, County, and State of New York, ss:

425 Be it remembered, that on this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles H. Dillingham, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illi-
426 nois, at , wherein John W. Kennicott and others, complainants, agst. The Board of Supervisors of Wayne Co., impleaded, &c. In chancery.

And the said CHARLES H. DILLINGHAM, being about the age of thirty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles H. Dillingham, and he did thereupon depose, testify, and say as follows, viz:

My business is dealer in municipal obligations.

2. Q. State your place of business, and how long, and where, and if any specialty.

A. My place of business is at 17 Nassau street, New York City. I have been engaged in the business of banking and dealing in securities for 11 years in the Eastern States, until the last year; am now making a specialty of municipality obligations.

427 3. Q. What are the necessary facts to be examined and fixed upon before you invest money in municipal obligations, or put them on the market as valid obligations to command the attention of investors of money?

A. I examine the law authorizing the obligations to be created, and if a vote of the legal voters is required, the condition, if any, is most carefully examined; next the official record is required, and then *in* fact established that the conditions are carried out.

4. Q. Have you had occasion to examine a bond demominated the Mount Vernon Railroad bond, issued by the Mount Vernon Railroad Company of the State of Illinois, secured by trust-deed and mortgage on 100,000 acres of land in Wayne County, Illinois? State fully.

A. I have seen some of them and had them offered to me.

5. Q. Did you purchase?

A. I did not. I declined to have anything to do with them.

428 6. Q. When the condition in the vote had at an election by the loyal voters of the county to obligate the county in a contract specified by the ballot containing as follows, to wit, "for appropriating the swamp-lands of Wayne County as a bonus to any company for building a railroad through said county," would you consider an obligation based on such vote of value, before the road was completed through said county, to be used as commercial paper?

A. I should take such security only as commercial paper when the condition was complied with in full as set forth in the vote. I consider the vote the contract, and the condition, complied with, as the force that gives it validity. There might be a legal question over the words "for building" in the ballot, but the doubt would destroy any *any* advance on such an obligation until the road was completed.

7. Q. Would it add to the security that a trust deed and mortgage should be executed, reciting said condition as made in the above
429 vote specified in question 6, without the railroad being completed?

A. It might add to such security if there was a trust-deed & mortgage, executed by proper authority, reciting said condition as made in the above vote, if there was authority to execute such instruments, providing a certainty of payment was secured of the principal and interest, in that it would be necessary that there should be an absolute title conveyed in the obligation; otherwise it would depend upon the fulfilment of collateral obligations, and then such instruments would amount to no more than the value of the collateral obligations and their responsibility. If the completion of the road was any part of the consideration, until that was performed no value could be added by a trust-deed or mortgage; in fact, I would say they would be no security of themselves that would aid the sale of the obligations or bonds, unless they were absolute without contingencies.

8. Q. Would you as a dealer in municipal securities, where a clause occurs in a trust-deed and mortgage on realty, reciting the vote in
430 question six as being the base of the contract and obligation made by a county, and reciting conditions as follows, to wit, "a portion of said lands so conveyed to said trustee, not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by

said trustee, free from all incumbrances, for purposes of sale from time to time on the requisition of said company for the purpose of raising funds for the payment of interest on loans in case of deficiency from other sources, and for such other purposes and expenditures as the exigenc'es of the business of the company may require, provided that no portion of said fourth part of said lands shall be sold until said road and branches shall have been actually finished," would you consider them marketable as commercial paper before such decision of the fourth part of said lands in value had been designated by metes and bounds and recorded in the county records, and the road complete?

A. I would not, as there would be no provision to bind the municipality in an obligation tangible to be enforced. Hence it could
431 not be as commercial paper when it depended on the contingency of the completion of the road. The only force or value I see in this obligation would depend on the confidence in the parties contracting to complete the building of the road. I should have required a division of the lands and an allotment of their valuation before I would purchase the obligations at any price, and in addition thereto know the road was finished.

9. Q. When a clause in the mortgage and a part of the same instrument executed to secure the payment of the obligation under the vote had and recited in question six occurs, and which clause is appended and a part of this question as Exhibit A to this deposition, what would be your view of the obligation or bond as a marketable security based upon said investment, the clause hereto attached as Exhibit A? Please examine in connection with question' six and eight of this deposition.

A. If it was the intention to secure by mortgage the issue of bonds on lands to be made commercial paper, all the requirements of the
432 law authorizing the mortgage, as well as the condition of the mortgage, must be complied with to give such bonds any value in the market, and the clause here referred to in this question as being a condition of the mortgage, as well as that in question 8, and each having reference to the base of the obligation or bond as created and referred to in question six, no obligation would seem created that would make the instrument of any force in giving value to bonds in the market without a proper list and schedule of the lands therein described was executed under seal by the same parties as a part of the instrument itself. Under such circumstances there could be no marketable value put upon obligation or bonds growing out of the vote had or mortgage executed without a classification and appraisement of the lands; at least, I would not take them.

10. Q. As a dealer in municipal securities, what is your information as to the public in general receiving or dealing in municipal securities and taking the same as commercial paper?

Ans. My information is that legitimate dealing in municipal
433 securities or purchased for investment are most carefully guarded when away from their locality; while business and commerce of the country in taking them up would only take them through responsible banks or brokers, or when their reputation had been firmly established.

11. Q. About what amount of municipal obligation has passed your examination, and about what amount have you negotiated in the last two years on the market? State as near as you can.

A. The amount would run high in the millions of both character. I could not approximate to an estimate.

13. Q. From your examination of the character & security given for

the issue of the bonds now in question, what value would you put upon them?

A. I could put no value on them, as I consider them worthless as security. They have been offered to me in the last four months, & I refused to bid at any price.

434 14. Q. Were you buying bonds at the time, and to what amount were you purchasing?

A. I was buying bonds at the time to the amount of three millions or more, if they were valid securities. I had an order to fill, and was desirous of filling it.

C. H. DILLINGHAM.

Examination taken, reduced to writing, and by the witness subscribed & sworn to before me this 25th day of May, A. D. 1874.

JOHN A. OSBORN,
U. S. Commissioner, Southern Dist. of New York.

The further taking of testimony is adjourned to Tuesday, May 26th, 1864, at 9 a. m.

EXHIBIT A.—J. A. O., U. S. C. (Made a part of question 9 of this deposition.)

And this indenture further witnesseth that these presents are made, executed, and delivered upon the terms, conditions, and agreements following—that is to say:

First. That the one hundred thousand and eighteen acres of
435 land granted as aforesaid, shall within months after the date of these presents be carefully valued and appraised by the said parties of the first part, their officers and agents, and the relative value of each piece or parcel of land established for the purpose of division and allotment thereof into four classes of the following number of acres and valuation—that is to say:

1. First class, consisting of lands of special value—as coal-fields, quarries of stone, mineral, &c., or from peculiarity of location—as being near towns or villages, acres. Minimum valuation, $ per acre.

2. Second class, of lands of superior agricultural qualities and location, acres. Minimum valuation, $ per acre.

3. Third class, of lands of high agricultural qualities, almost universal in the State of Illinois, acres. Minimum valuation, $ per acre.

4. Fourth class, of lands of the lowest agricultural qualities, within fifteen miles of the road or branches, but all capable of cultivation, acres. Minimum valuation, $ per acre.

All of which the said parties of the first part, with as little delay as practicable, shall certify and declare to the said party of the second
436 part by proper lists and schedules, under seal, with such description as shall enable the party of the second part to ascertain and establish the precise location, position, and boundaries of each and every piece or parcel of said land, and the class to which the same belongs, and the price or sum for which the same may be sold and conveyed, which price or sum may be varied and changed from time to time, at pleasure of said parties of the first part; provided, however, that the selling-price of any piece or parcel of land shall in no case be less than the minimum valuation of the same hereinbefore given, and of the class to which it is allotted, until the aggregate sum actually realized and

received in money or by the surrender of construction bonds or obligations, as hereinafter provided, shall amount to the aggregate valuation of any of the classes above set forth and declared, when the said parties of the first part may instruct and empower the said party of the second part to sell and convey any remaining pieces or parcels of land of said class at such price as they may deem proper, even below the minimum valuation of the class, but not to alter or change the mode of selling or the appropriation of the proceeds and receipts from such sales.

437 TUESDAY, *May 26th*, 1874.

Pursuant to adjournment. Present, Robert P. Hanna, for defendants. No one appears for complainants.

Defendants' counsel states that Norman A. Smith is present & ready to be examined.

The following is his deposition:

Deposition of Norman A. Smith.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes
438 depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Norman A. Smith, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at , wherein John W. Kennicott and others, complainants, agst. The Board of Supervisors of Wayne County, impleaded &c., defendants.

And the said NORMAN A. SMITH, being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Norman A. Smith, and he did thereupon depose, testify, and say as follows, viz:

439 Q. What is your name, age, residence, and occupation?

A. Norman A. Smith; age, upwards of 45; residence, Port Chester, Westchester County, New York; occupation, railroad contractor.

Q. In the year 1859 and 1860 were you engaged under a contract for the building of the Mount Vernon Railroad?

A. In 1858 and 1859 I was.

Q. Under a contract with the corporation?

A. Yes, sir.

Q. Were you in partnership with any person in the contract or were you alone?

A. I was in partnership with Isaac T. Van Duzer.

Q. When did you commence work, as near as you can recollect?

A. I think about May, 1858, as near as I can recollect.

440 Q. And how long did you continue the work?

A. Up to 1859–'60; the fall of 1859–'60.

Q. During the year 1859 did you become familiar with the drawing, executing, and recording of a mortgage upon the railway?

A. Yes, sir; I drafted the mortgage; I framed it, and took it to Mr. Jno. N. Whiting, who drew it up.

Q. You attended to the drawing of the mortgage and to the printing of the bond, did you not?

A. Yes, sir.

Q. Both were completed a short time before the recording of the mortgage?

A. Yes; I took the mortgage to Illinois and procured its execution and superintended its recording.

Q. After the mortgage was recorded, what did you do with it?

441 A. I brought it back to New York and delivered it to Isaac Seymour, the trustee.

Q. What was done with the bonds?

A. The bonds were divided; one-half of them were given to Wayne County and one half of them were retained by myself, as treasurer of the road.

Q. When you say they were given to Wayne County, what do you mean? To what person were they actually delivered?

A. They were delivered to Isaac Seymour for Wayne County.

Q. And the other half of the were retained by yourself as treasurer of the road?

A. As treasurer of the road. Yes, sir.

Q. For the general purposes of the road?

A. For the general purpose of building the road. Yes.

442 Q. Please state in detail, and in order as the transactions happened, precisely what you did with the bond that you took as treasurer of the railroad company.

A. I never sold a bond. So far as I used them as treasurer of the railroad company, I used them as collaterl security for loans—for money that was expended on the road, with the exception of three, I think. Three $1,000 bonds were sold by my partner in Saint Louis for goods.

Q. Did you ever sell Austin Myers any bonds, directly or indirectly?

A. I did not.

Q. Did you ever give any order on Isaac Seymour for any bonds to Mr. Myers or his agent?

A. No.

Q. Have you any knowledge how Mr. Myers came in possession of his bonds?

443 A. He obtained them, I suppose, through Mr. Kendrick.

NORMAN A. SMITH.

Examination taken, reduced to writing, & by the witness subscribed & sworn to this 26th day of May, A. D. 1874, before me.

JOHN A. OSBORN,

U. S. Commissioner Southern District of New York.

Deposition of Augustus T. Post.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail
444 in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Augustus T. Post, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Ills., wherein John W. Kennicott and others, complainants, agst. the Board of Supervisors of Wayne County, impleaded, &c., defds.

And the said AUGUSTUS T. POST, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Augustus T. Post, and he did thereupon depose, testify, and say as follows, viz:

445 (1.) Q. What is your name, age, business, and place of business?

A. Augustus T. Post; age, 40 years; business is dealer in bonds, &c.; place of business is at 25 Nassau street, New York.

(2.) Q. How long have you been engaged in the purchase and sale of obligations created by municipalities?

A. Four years.

(3.) Q. Have you had occasion to examine into the facts and basis of value of the bonds denominated "The Mount Vernon Railroad Company bond," secured by a mortgage and trust-deed on the swamp lands of Wayne County, State of Illinois? If so, state whether there are or were a marketable bond in the market?

A. Yes. Never considered them marketable.

Q. Have you purchased any?

A. No.

446 Q. What are the facts to be established before you invest money in an obligation or bond dependent on the acts or issue of such by a municipality?

A. Authority to issue, vote by people or trustees or supervisors, as case may be, and bears signature of proper officers.

Q. What is your information as to the public in general, or men engaged in the business and commerce of the county, taking such securities in the way of commercial paper?

A. It is customary for the general public to buy municipal bonds on the assurance of a dealer that bonds are genuine.

(Exhibit A is contained in printed record hereto attached, said exhibit

being a copy of charter and mortgage of the Mt. Vernon R. R. Co., and trust-deed and mortgage of lands in Wayne County.)

Q. Examine the pamphlet, hereto annexed, marked "Exhibit A, J. A. O.," and made a part of this question, and read the paragraphs in quotation on pages respectively 21, 27, and 32 of said exhibit, and state whether the bonds therein mentioned would have a market value without a division and allotment of the value of the lands as specified on pages 21 and 22, and the road completed.

447 A. A banker or dealer would not consider the Mount Vernon Railroad bonds properly issued, but an investor would not be likely to make the examination.

Q. Are you purchasing and selling municipal obligations, and to what amount?

A. $3,000,000 per annum.

Q. Do you know of their being on the market?

A. Yes.

Q. What would be their value?

A. Nothing. I would not buy them.

AUGUSTUS T. POST.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

448 *Deposition of A. W. Beasley.*

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, A. W. Beasley, to testify, and the truth to

449 say, on the part and behalf of the defendant, in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Illinois, wherein John W. Kennicott et al., complainants, vs. The Board of Supervisors of Wayne County, impleaded, & defendants, in chancery.

And the said A. W. BEASLEY, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said A. W. Beasley, and he did thereupon depose, testify, and say as follows, viz:

Q. What is your business and place of business?

A. Dealer in municipal bonds at No. 11 Wall street, New York.

450 Q. How long have you been engaged in the purchase & sale of obligations created and issued by or on account of municipalities?

A. Four years & over.

Q. Have you had occasion to examine as to the validity and value of the bond denominated the Mount Vernon Railroad Company bond, where the payment is secured on the swamp lands of Wayne County, State of Illinois—whether they are marketable security?

A. I have examined the bond and would not consider them marketable, for the reason that I would not regard them as a lien on the land, as the railroad has not been built, as I understand.

Q. What are the facts to be established before you invest money in an obligation or bond dependant on the acts and issue by or for a municipality?

A. First, it must be ascertained that there was a constitutional law authorizing the issue of the bond, and that the bond
451 was issued in compliance with the law.

Q. What is your information as to the public in general, or men engaged in the business and commerce of the county, taking such securities in the way of commercial paper?

A. They do not buy such securities unless their reputation is well established through responsible dealers.

Q. Examine Exhibit A and the paragraphs marked with quotations on the margin on pages 21, 27, & 32, respectively, of said exhibit, and state whether the bonds in question in this suit would have a marketable value without a division and allotment of the value of the lands as specified on pages 21 and 32 of said Exhibit A; and would they have any value until the road was finished?

A. I have examined Exhibit A, and would not consider the bonds of any value, so far as the lands are concerned, without such division was made as specified in the mortgage, and would not now have any
452 value until the road was built, and as a railroad bond I would consider they had no value until the road was built.

Q Are you purch'ing and selling municipal bonds & obligations; and if so, to what an amount?

A. I am purchasing & selling to an amount of over $2,000,000 per year, and can buy and sell any amount of legitimate bonds.

Q. Have you made any bid for the above bonds?

A. I have not; I would not purchase them.

A. W. BEASLEY.

Examination taken, reduced to writing, & by the witness subscribed this 27th day of May, A. D. 1874, before me.

JOHN A. OSBON,
U. S. Commissioner Southern Dist. of N. Y.

453 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United

being a copy of charter and mortgage of the Mt. Vernon R. R. Co., and trust-deed and mortgage of lands in Wayne County.)

Q. Examine the pamphlet, hereto annexed, marked "Exhibit A, J. A. O.," and made a part of this question, and read the paragraphs in quotation on pages respectively 21, 27, and 32 of said exhibit, and state whether the bonds therein mentioned would have a market value without a division and allotment of the value of the lands as specified on pages 21 and 22, and the road completed.

447 A. A banker or dealer would not consider the Mount Vernon Railroad bonds properly issued, but an investor would not be likely to make the examination.

Q. Are you purchasing and selling municipal obligations, and to what amount?

A. $3,000,000 per annum.

Q. Do you know of their being on the market?

A. Yes.

Q. What would be their value?

A. Nothing. I would not buy them.

AUGUSTUS T. POST.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

448 *Deposition of A. W. Beasley.*

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, A. W. Beasley, to testify, and the truth to

449 say, on the part and behalf of the defendant, in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, Illinois, wherein John W. Kennicott et al., complainants, vs. The Board of Supervisors of Wayne County, impleaded, & defendants, in chancery.

And the said A. W. BEASLEY, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said A. W. Beasley, and he did thereupon depose, testify, and say as follows, viz:

Q. What is your business and place of business?

A. Dealer in municipal bonds at No. 11 Wall street, New York.

450 Q. How long have you been engaged in the purchase & sale of obligations created and issued by or on account of municipalities?

A. Four years & over.

Q. Have you had occasion to examine as to the validity and value of the bond denominated the Mount Vernon Railroad Company bond, where the payment is secured on the swamp lands of Wayne County, State of Illinois—whether they are marketable security?

A. I have examined the bond and would not consider them marketable, for the reason that I would not regard them as a lien on the land, as the railroad has not been built, as I understand.

Q. What are the facts to be established before you invest money in an obligation or bond dependant on the acts and issue by or for a municipality?

A. First, it must be ascertained that there was a constitutional law authorizing the issue of the bond, and that the bond
451 was issued in compliance with the law.

Q. What is your information as to the public in general, or men engaged in the business and commerce of the county, taking such securities in the way of commercial paper?

A. They do not buy such securities unless their reputation is well established through responsible dealers.

Q. Examine Exhibit A and the paragraphs marked with quotations on the margin on pages 21, 27, & 32, respectively, of said exhibit, and state whether the bonds in question in this suit would have a marketable value without a division and allotment of the value of the lands as specified on pages 21 and 32 of said Exhibit A; and would they have any value until the road was finished?

A. I have examined Exhibit A, and would not consider the bonds of any value, so far as the lands are concerned, without such division was made as specified in the mortgage, and would not now have any
452 value until the road was built, and as a railroad bond I would consider they had no value until the road was built.

Q Are you purch'ing and selling municipal bonds & obligations; and if so, to what an amount?

A. I am purchasing & selling to an amount of over $2,000,000 per year, and can buy and sell any amount of legitimate bonds.

Q. Have you made any bid for the above bonds?

A. I have not; I would not purchase them.

A. W. BEASLEY.

Examination taken, reduced to writing, & by the witness subscribed this 27th day of May, A. D. 1874, before me.

JOHN A. OSBON,
U. S. Commissioner Southern Dist. of N. Y.

453 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United

States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they live in New York, at a greater distance from Springfield, Illinois, the place of trial of the above cause, than one hundred miles.

I further certify that due notification of the time and place of
454 taking the said deposition signed by me was made out and served on the adverse party or their solicitors, and admission of service of copy of said notice is endorsed thereon, to be present at the taking of the depositions and to put interrogatories if he or they might think fit.

I further certify that on the 22, 23, 25, 26, & 27th days of May, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by Robert P. Hanna, esq., attorney for defendants, (no one appearing for complainants,) and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses they subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up & directing the same with my own hand to the court for which the same were taken.

455 And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 27th day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.] JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Indorsed:) Filed May 30, A. D. 1874. J. A. Jones, clk.

456 UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court, January term, 1874.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE COUNTY, Illinois, &c. } In chancery.

To W. B. Scates, Goodwin, Larned & Towle, & McClernand & Broadwell, solcrs. for complts:

GENTLEMEN: you are hereby notified that we shall examine William Irwin, John Keene, sr., Jefferson W. Bamhill, Sam'l J. R. Wilson, Rigdon B. Slocomb, Edward Benham, Robt. T. Forth, George Johns, Frank B. Thompson, & James Churchhill & others as witnesses, & take their

depositions, to be read in the trial of the above cause on the part of the defendants, before John Keene, jr., a United States commissioner, at his office, in the town of Fairfield, Wayne County & State of Illinois, on the 25th day of November, A. D. 1873, between 8 o'clock a. m. & 8 o'clock p. m. of said day, & at the same hours from day to day until the depositions aforesaid are finished. when & where you can
457 attend & cross-examine said witnesses if you see proper.

Dated Novr. 13, 1873.

N. L. FREEMAN,
ROBINSON, KNAPP & SHUTT,
Solcrs. for Dfdts.

Received copy of the within notice Nov. 14, 1873.

S. A. GOODWIN,
W. B. SCATES,
Attorney' for all of the complainants except W. R. Hodges.

We acknowledge service of a copy of the within, this Nov. 14th, 1873.

McCLERNAND & BROADWELL,
Solcr. for Hodges.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne, ss:

The depositions of Rigdon B. Slocumb, Edward Bonham, Samuel J. R. Wilson, William Irwin, Robert T. Forth, and Jefferson W. Bamhill, taken before me, John Keen, jr., a special examiner appointed by the judge of the circuit court of the United States in and for the southern district of Illinois, in a case pending in said court,
458 on the chancery side thereof, wherein John W. Kennicott et al. are complainants and the Board of Supervisors of Wayne County, Illinois, impleaded, &c., are defendants, said depositions being taken before me at my office in the town of Fairfield, in the county of Wayne, State of Illinois, on the 25th, 26th, and 27th days of Nov., A. D. 1873, between the hours of 8 o'clock a. m. and 8 o'clock p. m. of said days, and in the presence of Jno. A. McClernand & W. B. Scates as solicitor' for complainants, and A. L. Knapp, a solicitor for said defendants, and in pursuance of the notice hereunto attached.

Deposition of Rigdon B. Slocumb.

RIGDON B. SLOCUMB, being first by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

Ques. 1st. What is your name, age, and place of residence?

Ans. Rigdon B. Slocumb. My age is 77 years. My residence is Fairfield, Wayne County, Illinois.

2d. How long have you lived in Fairfield?

Ans. Over fifty years.

459 3rd. Do you remember the election held in Wayne County, Illinois, on the 5th day of Nov., 1855, in relation to the disposing of the swamp-lands of said county?

Ans. My memory is deficient as to dates, but I recollect such an election being held.

4. Do you remember the character of the canvass attending said election?

Ans. I don't recollect the particulars of it now.

5. Do you remember whether or not there were different roads to whom this land was to have been given?

Ans. Do not recollect.

6. What official position, if any, did you hold in said county, April, 1859?

Ans. I was clerk of the circuit court of said county.

7. Do you know whether any special term of the county court of said county of Wayne was held on the 20th day of April, 1859?

460 Ans. I do not. If there had been, I had a good opportunity to have known it, as my office was in the court-house.

8. Did you or not have any interviews on that day with Samuel J. R. Wilson, county judge of said Wayne County, and upon what subject?

Ans. I did have an interview with Samuel J. R. Wilson, and I presume it was on that day, on the subject of a deed of trust and a mortgage to Isaac Seymour for the swamp-lands of Wayne County.

9. Who had brought that deed here for execution, if you know?

Ans. It was, I think, brought by Isaac T. Vanduzer & Zadok Casey and another man, I think. I think there were three of them.

10. Are you not able to state from this fact that the county court of Wayne County was not in session on that day?

Ans. There was no call' term nor regular term of the county court held on that day in the court-house.

461 11. Can you state what work was done by Vanduzer, Smith & Co., in the way of building a railroad through Wayne County, at any time previous to 1860, or afterwards? If so, state what work was so done, and when?

Ans. I cannot state what amount of work was done, nor by whom. I know there was work done on the bottom of the Skillet Fork, between it and the west county line, such as cleaning out the road-bed by cutting timber and clearing it off, and making some ties. There was also some work done between Skillet Fork and Fairfield.

Cross-examination by Jno. A. McClernand:

Ques. 1. What did Samuel J. R. Wilson say on the occasion of the interview of the 20th April, above referred to, in answer to your remark concerning the said mortgage-deed and trust-deed?

Ans. His remark was that that was his opinion also, when I told him that if I was one of the court I never would sign them.

Q. In speaking of the date of said deeds, do you speak from
462 memory or from an examination of the records?

Ans. I spoke from memory, and also from the records. So far as memory is concerned, I make it from circumstances connected with that day. I don't suppose I could have given the exact date of the instruments without reference to the records.

R. B. SLOCUMB.

I except to the several questions propounded by the solicitors for the defendants to Rigdon B. Slocumb and the several answers made by such witness to the same questions, and particularly to question 7 and the answer thereto, as provable by the record and not by parol evidence; also to question 8 and the answer thereto, as relating to and involving mere matter of hearsay. These exceptions are made by John A. McClernand, solicitor for complainants.

Deposition of Edward Bonham.

EDWARD BONHAM, being first by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

463 Ques. 1st. What is your name, age, and place of residence?

Ans. Name, Edward Bonham; age, 47 years; residence, Fairfield, Wayne County, Illinois.

2. How long have you lived in Fairfield?

Ans. Thirty years.

3. Are you the Edward Bonham whose name appears as one of the first board of directors in an act passed by the legislature of Illinois, entitled "An act to incorporate the Belleville and Fairfield Railroad Company," approved Feby. 15th, 1855?

Ans. I have no recollection of dates, but suppose I am. I have no doubt but I am the person mentioned in that act.

4. Do you know of any books of subscription to the capital stock of said railroad company being opened by any one in pursuance of the terms of said act or any stock subscribed thereto?

Ans. I do not.

464 5. From your position in said corporation, would you not have known if any such books had been opened or any such stock subscribed?

Ans. I think I should.

6. Do you know of any consolidation or merging of the said Belleville and Fairfield Railroad Company into or with the Mt. Vernon Railroad Company?

Ans. I do not.

7. Did you ever hear of any such consolidation or merging, before this suit was brought, as having taken place?

Ans. I did not.

8. Did you ever receive any notice of any meeting to be held by the incorporators of the said Belleville and Fairfield Railroad Company for consolidating said company with the Mt. Vernon Railroad Company?

Ans. Not that I now recollect.

465 9. Do you know of Vanduzer, Smith & Co. doing any work on any railroad in Wayne County since 1858?

Ans. I can't say that I know of their ever doing any work from my own knowledge.

10. Do you know of any efforts being made by any one in Wayne County since 1858 to procure authority to construct a railroad through Wayne County; and if so, what were such efforts? Either by obtaining an act of the legislature to that effect, or otherwise?

Ans. I do know of efforts being made. Authority was procured from the legislature to construct a road through Wayne County from a point on the Ohio River to a point on the Illinois Central Railroad. I do not remember the date. This was the Illinois Southeastern Railway, now called the Springfield and Illinois Southeastern Railway.

11. Do you know of any efforts being made by Zadok Casey and others of the Mt. Vernon Railroad Company about the year 1830 to procure legislative authority to build a railroad through Wayne County? If so, what were such efforts?

466 Ans. I do not remember.

EDWARD BONHAM.

(Complainants' counsel except to the questions and answers thereto numbered 3 to 11 inclusive, on the grounds that they are incompetent and irrelevant and assumptive.)

Deposition of S. J. R. Wilson.

SAMUEL J. R. WILSON, being first by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

Ques. 1. What is your name, age, & place of residence?

Ans. Samuel J. R. Wilson; age, 57 years; residence, Fairfield, Wayne County, Illinois.

2. Was you county judge of Wayne County, Illinois, from the years 1859 to 1861?

Ans. I was.

3. Was there any term of the county court held in Wayne County, either regular or special, on the 20th day of April, 1859?

467 Ans. There was not.

4. Had any notice been given to the members of the court or to the clerk thereof that any term would be held on that day?

Ans. Not that I knew of.

5. Did you, as county judge, execute the deed of trust and mortgage now in suit to Isaac Seymour, bearing date April 20th, 1859; and, if so, where was said deed & mortgage executed?

Ans. I did. They were executed at my house, about two hundred yards southeast from the court-house in Fairfield, in Wayne County, Illinois.

6. State, if you can, when the record purporting to be of April 20th, 1859, of said county court in relation to said deed and mortgage was made and entered up on the records of said court.

Ans. On the first Monday in June following I handed the clerk the manuscript for the April special term of court, and it was entered

468 of record before the regular business of the regular term in June.

7. Who brought that deed of trust and mortgage to you for execution, and who was present when it was so executed?

Ans. It was brought by B. L. Voorhees, Isaac T. Vanduzer, and Zadok Casey, myself, and Thomas M. Scott, associate justice of the county court. Zadok Casey and B. L. Voorhees were present, and probably Isaac T. Vanduzer.

8. Was Norman A. Smith present?

Ans. He was not. He was not here at all at that time.

9. At this time of the execution of said deed, did you make any representations to Zadok Casey that there was no term of the court in session?

Ans. I did.

10. Was there any suggestions made by anybody that a record of court could afterwards be made up; and if so, by whom?

Ans. There was, by Gov. Casey & B. L. Voorhees.

469 11. Did you ever go on to New York in the employ of the Mt. Vernon Railroad Company; and if so, how many times, and when?

Ans. I went four times in their employ; twice I believe in 1859, once in 1860, and the last time in February, 1861.

12. Who was treasurer of the Mt. Vernon Railroad Company when you was there?

Ans. The two first trips when I was there Norman A. Smith was treasurer; at the other times when I was there Charles W. Lewis was treasurer.

13. At any of these times was you a director of the said railroad company; and, if so, for how long was you such director?

Ans. I was a director in form from 1859 to as long as it had an existence; that is my recollection about it.

14. Did you, in connection with any officers of said company, at any of these times you speak of, try to negotiate the bonds of said railroad company mentioned in said mortgage; and, if so, did you succeed in negotiating them?

470 Ans. There was an effort at one time to negotiate with parties bonds for iron for the road. We never got any of the iron for the bonds.

15. Did you ever know of any of said bonds ever being sold for money?

Ans. I did not.

16. Did you ever negotiate any of said bonds to one William R. Hodges?

Ans. I did not.

17. At any of these times when you were in New York did you know one Austin Myers; if so, was he connected with the road? And if you know, state whether any bonds of the railroad company were placed in his hands, and if so, for what purpose.

Ans. I did. He was connected with the iron contract, or had something to do with it. There were bonds placed in his hands to purchase iron. My recollection is that he was also a director.

471 18. Do you know what ever became of those bonds so placed in his hands, and whether any iron was obtained therefor?

Ans. There was never any iron obtained. I do not know what went with the bonds.

19. Did any of the proceeds of any of said bonds of the Mt. Vernon Railroad Company ever come into the possession of Wayne County?

Ans. Not a dime.

20. Who composed the county court of Wayne County in April, 1859?

Ans. Myself, Thomas M. Scott, & William Irwin.

21. What has become of Thomas M. Scott?

Ans. He is dead. He has been dead 3 or 4 years.

22. In April, 1859, did you hold any written power from your associates in the county court to act for them in the court?

Ans. I did not, neither verbal nor written.

472 23. While you was a director of the Mt. Vernon Railroad were any efforts made by those interested in said road to obtain authority, legislative or otherwise, to extend said road eastwardly from Mt. Vernon? If so, state what those efforts were and by whom made.

Ans. Myself and Gov. Casey, who was acting as president of the Mt. Vernon Railroad Company, spent the bigger part of the session of the legislature in 1859 in efforts to get an extension of the Mt. Vernon Railroad charter through Wayne County, and failed; other efforts were made. I was sent by Gov. Casey, president of the company, to see General Pickering, to negotiate for the franchise of the Alton and Mt. Carmel and the Belleville and Fairfield Railroad charters, which were then considered controlled by General Pickering, and failed there. I went to see General Pickering immediately after we failed, to get an extension of the charter of the Mt. Vernon Railroad Company; this was in the spring of 1859. I went again in the summer of 1859 to see General Pickering on the same business, and by request of the same parties, and failed again.

473 24. Do you know of any other person being sent by the Mt.

Vernon Company to see General Pickering upon the same subject? If so, who and when?

Ans. Mr. Robert P. Hanna was sent between the times that I went, and reported a failure.

25. While you was a director of the Mt. Vernon Railroad Company, what was your knowledge, if any, of any consolidation of the Mt. Vernon company with the Belleville and Fairfield company?

Ans. I had no knowledge of any consolidation, nor no parties interested claimed any consolidation that I know of.

26. Did the Mt. Vernon Company, while you was such director, have or claim to have any control whatever of the Belleville and Fairfield road or its charter?

Ans. They did not.

27. Did you as county judge, with your associate, Thomas M. Scott, on the 19th day of November, 1858, make a contract with Isaac
474 T. Vanduzer, Norman A. Smith, and Barnard L. Voorhees for building a railroad through Wayne County to Mt. Vernon; and, if so, when was said contract made?

Ans. About that date we made such a contract and signed up papers to that effect in the city of St. Louis, Missouri.

28. At that time had the county court of Wayne County or said Vanduzer and others any legislative authority or charter over which you had any control to build any railroad through Wayne County or anywhere else?

Ans. None whatever through Wayne County; as a court, we held no legislative authority to build a railroad through Wayne County nor nowhere else. Vanduzer and others had no authority to build a road through Wayne County; this I know by trying so hard to get the authority after making the contract.

29. How far is Fairfield from the west line of Wayne County?

Ans. Eighteen & one-half miles.

475 30. Do you remember a vote or an election that was taken in Wayne County in Nov., 1855, upon the subject of appropriating the swamp lands of Wayne County as a bonus to any company for building a railroad through said county? If so, state the character of the canvass attending said election.

Ans. I remember the election about that time; it was canvassed through the part of the county that I reside in for an east and west road. I heard parties advocating a north and south road.

31. What was the general purpose intended to be accomplished in the taking of said vote?

Ans. To take the voice of the people whether they would give the swamp lands of Wayne County as a bonus for building a railroad through Wayne County.

32. Was this vote to make a specific disposition of the land or to settle a policy in reference to them?

Ans. I expect that the design of the vote was to settle a policy, but I know a great many that voted, designed it for a specific road.

476 33. Do you know of any of these Mt. Vernon Railroad bonds placed in the hands of any other persons besides Austin Myers for the purposes of obtaining iron? If so, state in whose hands they were placed.

Ans. There were bonds, some of them, placed in the hands of S. B. Kendrick, of Logansport, Indiana, for that purpose. I think there were some put in the hands of Uriah Jamison, of Mansfield, Ohio, and some

either put in the hands of L. D. Crippin, or else he was in partnership with S. B. Kendrick.

34. Was any iron obtained therefor, or what became of said bonds afterwards?

Ans. There was no iron obtained that I ever heard of. I don't know what became of the bonds, other than is stated hereafter. Mr. Jamison told me long afterwards that he held some bonds, and Mr. Kendrick and Col. Morrison, of the State of Georgia, told me that Col. Morrison had got ten thousand dollars of the bonds from Kendrick, and Kendrick would pay the money himself for the iron. Col. Morrison has since written to me to know what to do with them, and I never an-
477 swered him. Mr. Kendrick and Mr. Morrison said at the time that Kendrick had paid them Morrison, on a draft he owed Morrison.

35. While you was director of the Mt. Vernon Company, was there any money, proceeds of any of the bonds of said Mt. Vernon Railroad Company mentioned in said deed of trust, ever received by or paid into the treasury of said company?

Ans. Not a dollar that I ever knew of.

36. During the time you were acting as such director, state, if you can, whether these bonds had any market-value in New York.

Ans. None that I ever heard of.

37. While you were in New York, do you know whether these bonds were ever quoted at the stock exchange in said city, or in the market-list of such securities?

Ans. They never were quoted that I know of, and while there I always examined the price-currents.

478 38. State, if you can, what work was ever done by Vanduzen, Smith & Co., in Wayne County, under their contract referred to, and the amount of the same.

Ans. There was some of the road-bed cleared off, probably to the amount of one mile, part of the way being through fields; some ties got out, and a little grading, but very little.

39. Do you know whether that work was paid for by anybody?

Ans. I don't know of its being paid for by them. I paid two security debts for Vanduzen, Smith & Co.

40. Was the Mt. Vernon Railroad ever built through Wayne County, or into it?

Ans. It never was, nor any part of it.

41. While you were in the county court of Wayne County, did said county court ever assent to or in any manner ratify the assignment by Vanduzer, Smith & Co., of their railroad-building contract to the Mt. Vernon Railroad Company?

479 Ans. It did not.

S. J. R. WILSON.

Complainant objected to interrogatories 3 to 41 inclusive, and the answers of S. J. R. Wilson thereto, respectively, upon the ground that the same are incompetent and irrelevant, and are also matters of hearsay.

Deposition of Wm. Irvin.

WILLIAM IRVIN, being first by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

Ques. 1. What is your name, age, and place of residence?

Ans. William Irwin; age, 61 years; residence, Johnsonville, Wayne County, Illinois.

Q. Were you a member of the county court of Wayne County in April, 1859; and, if so, from what time?

Ans. I was a member of said court. I was elected in Nov., 1858, and served up to March, 1861.

480 3. Was there any special term of said court held in said county on the 20th April, 1859?

Ans. There was none to my knowledge.

4. Did you, as a member of said court, ever receive any notice that a special term would be held on said 20th April, 1859?

Ans. I did not.

5. Was you present at every meeting of said court after your election thereto?

Ans. I was.

6. Do you know when the order of court purporting to be proceedings of a special term of said court held April 20, 1859, was entered upon the records of said court?

Ans. I do not know.

7. Do you remember the election held in Wayne County, in Nov., 1855, on the question of donating the swamp-lands of said county to any company for building a railroad through said county? If so,

481 state what the nature of the canvass was.

Ans. I remember an election being held for that purpose, but could not say it was in 1855, but it was about that time. There were some wanted the land appropriated for school purposes, and others wanted it for railroad purposes. An east and west road was the one most spoken of, but there were some advocated a north and south road.

8. Did Samuel J. R. Wilson ever have from you any authority, verbal or written, to act for you as a member of said court or upon any business before said court in connection with railroads or otherwise?

Ans. He did not.

9. While you was a member of the county court, did said court ever assert to or ratify the assignment by Vanduzer, Smith & Co. of their railroad-building contract to the Mt. Vernon Railroad Company?

Ans. It did not.

WILLIAM IRWIN.

482 Complainants objected to interrogatories 2 to 9 inclusive and the answer of William Irwin thereto respectively, upon the grounds that the same are incompetent and irrelevant and are also matters of hearsay.

Deposition of Robt. T. Forth.

ROBERT T. FORTH, being first by me carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

Quest. What is your name, age, and place of residence?

Ans. Robert T. Forth; age, 59 years; residence, Johnsonville, Wayne County, Illinois.

Q. Do you remember the election held in said county in Nov., 1855, on the question of disposing of the swamp-lands of Wayne County to any company for building a railroad through said county? If so, state the nature of the canvas' attending the same.

Ans. I remember an election being held for that purpose about that time, but can't state that it was in 1855. There was some division
483 amongst the people; some were in favor of appropriating it to school purposes, and some were in favor of appropriating it for railroad purposes; some were in favor of an east and west road, and some a north and south road.

3. Were you in Springfield, Illinois, during the session of the legislature of 1859; and, if so, were you in any way connected therewith?

Ans. I was; I was a member of the house of representatives from Wayne County, Illinois. Edwards County was also in the same district.

4. Were any efforts made during that session, and, if so, by whom, to obtain a charter for the extension of the Mt. Vernon Railroad Company eastwardly through the county of Wayne?

Ans. There was. My understanding was that Samuel J. R. Wilson and Gove'nor Casey were there, also Mr. Vanduzer and Mr. Voorhees, the two last being the gentlemen who said they were the men who had the building contract for building a railroad through Wayne County. They were trying to get a charter for a railroad from Mt. Vernon eastwardly through Wayne County. There was a bill introduced
484 to that effect, but it did not pass is my recollection.

5. As the member from Wayne County were you frequently in consultation with these gentlemen upon the subject of obtaining this charter?

Ans. I was.

6. Did they claim, or any of them, that they then had authority to build a railroad through Wayne County?

Ans. They did not.

7. How long were these gentlemen, or any of them, there on this business?

Ans. The greatest part of the session.

8. State who was opposing particularly the granting of said charter.

Ans. My understanding was Gove'nor Pickering for one and Leander Twiney, and I opposed it myself, unless it would pass with an
485 amendment restricting to within one mile on either side of a direct line from Mt. Vernon to Fairfield. Mr. B. Anderson, a member of the house from Jefferson County, opposed said bill on the same grounds I did. The persons seeking to obtain the charter would not agree to this amendment.

R. T. FORTH.

Complainants' counsel objected to interrogatories 2 to 8 inclusive and the answer of Robert T. Forth thereto, respectively, upon the ground that the same are incompetent and irrelevant, and also matter of hearsay.

Cross-examination of Robert T. Forth by complainant's counsel:

Ques. 1. Were you living in this county during the years 1858 to 1862?

Ans. I was.

2. Did you know Samuel J. R. Wilson during that time?

Ans. I did.

486 3. Did you during that time visit his house or neighborhood; and, if so, how frequently?

Ans. I did not.

4. State, if you know, about what time Judge S. J. R. Wilson opened a stock of goods, and where.

Ans. I do not know the exact time. There were goods here in Fairfield said to be Judge Wilson's. I cannot recollect the time, but think it was after this railroad contract was made. It must have been about the years 1859, 1860, or 1861.

5. Were you ever in Judge Wilson's store after it was opened?

Ans. I don't recollect that I ever was.

6. Where was the house in which Wilson had his stock of goods located in Fairfield?

Ans. About one block west of the public square, on South street.

487 7. How far from Fairfield, and in what direction from it, did you live during the years 1859, 1860, & 1861?

Ans. About sixteen or eighteen miles in a northwest direction.

R. T. FORTH.

Exception taken by defendant's solicitor to interrogatories 2 to 6, inclusive, and to the several answers thereto by Robert T. Forth, as being not proper cross-examination.

Cross-examination of Wm. Irvin:

Cross-examination, by solicitors for complainants, of William Irwin:

Ques. 1. Were you present at the regular June term of the county court of Wayne County in 1859; and, if so, in what capacity?

Ans. I was, as a member of the court, as associate justice.

2. Did the court usually have the orders of court read after they were entered? State what your practice was in that respect.

488 Ans. The practice while I was in the court was to read every morning what was done the day before.

3. Was it the practice of the judges of the court to sign the records of orders after having them read, daily, or at the end of the term?

Ans. I could not positively say whether they did each day or not; it has slipped my mind. We signed the record at the end of the term.

4. If one of the judges should disagree to having an order entered, and a majority of the court should order it, was it the practice that the dissenting judge would sign the orders containing the one to which he objected?

Ans. In some cases while I was in the court there were some orders passed which I entered my protest to; they were small orders, but signed the record in the usual way afterward.

5. Was the record of orders ever signed by the judges without first having them read to see that they were correct?

489 Ans. I think not.

6. Was that the case always as well at special terms as at regular terms of the court?

Ans. I think it was.

7. Were Judges Wilson and Scott present with you at the June term, 1859?

Ans. I think they were.

8. Was it your habit as one of the judges of the court, and did you always look over and make yourself acquainted with all orders that may have been entered in your absence by the other judges of the court?

Ans. There were none passed in my absence, as I was always present at every term of the court.

9. When did you first see and read the deed made by the county court of Wayne County, of date 13th March, 1856, to Charles Wood, of the swamp lands?

490 Ans. I don't know that I ever did see it or read it to my recollection now.

10. When did you first learn that that deed was executed?

Ans. I don't recollect; I could not say.

11. Was that land reconveyed by Wood to the county before your term as judge commenced?

Ans. I don't know when the deed was made. I was elected in 1858.

12. At the time that you assumed the duties of judge, did the county then claim and hold title to the swamp lands?

Ans. That was my understanding that it did.

Re-examined by defendant's counsel:

Ques. 1. Do you remember whether at the June term, 1859, of the county court, you saw the order of said court purporting to have been entered up April 20, 1859, in relation to the deed to Isaac Seymour?

491 Ans. I have no recollection of seeing it. There is no impression on my mind that I did see it.

Recross examination by complainant's solicitors:

Ques. 1st. Have you seen it since?

Ans. I have no recollection of ever seeing it.

2. Does not that order of April 20, 1859, at the special term, stand upon the order-book next preceeding the regular June term, 1859?

Ans. I don't know.

Re-examined by defendant's counsel:

Ques. 1. Did you ever read that order, or was it ever read to you by the clerk?

Ans. I never read it nor do I have any recollection of the clerk ever reading it to me.

WILLIAM IRWIN.

492 Cross-examination of Ed. Bonham:

Cross-examination of Edward Bonham by complainants' counsel.

Ques. 1. State the time, or about the time, as near as you can now recollect, when you first saw and read a certain deed of trust executed by the county court of Wayne County to Charles Wood, bearing date 13th March, 1856, of the swamp-lands of Wayne County?

Ans. I do not think I ever saw or read such deed.

2. State when you first learned of that deed and its character and object.

Ans. Do not now remember, but I suppose immediately after its execution.

3. Do you recollect about what time Judge Samuel J. R. Wilson brought a stock of goods from New York and opened a store in Fairfield?

Ans. I don't really know that Judge Wilson ever brought any goods from New York to Fairfield.

493 4. About what time was the brick store of T. T. Bonham on South street, one block west of the public square, in Fairfield, rented for the purposes of a store and occupied as such between the years 1858 and 1862?

Ans. I cannot fix the time.

Re-examination by defendants' solicitor:

Ques. 1. Who was the Charles Wood in the deed of trust you have

been asked about; where did he live in 1856, and what official position did he hold, if any?

Ans. He was a citizen of Fairfield, Wayne County, Illinois. At or about that time he was swamp-land commissioner of Wayne County.

EDWARD BONHAM.

Deposition of J. W. Barnhill.

JEFFERSON W. BARNHILL, being first by me carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith, (this witness being introduced by the
494 complainants in pursuance and under the notice given by the defendant hereto annexed to the foregoing depositions,) in answer to the following interrogatories:

Ques. 1. What is your name, age, and place of residence?

Ans. Jefferson W. Barnhill; age 55 years; residence Fairfield, Wayne County, Illinois.

2. How long have you resided in Fairfield?

Ans. Fifty-two years.

3. State what office, if any, you held in Wayne County, Illinois, during the year 1859.

Ans. I was clerk of the county court of said county.

4. State whether you entered up the orders of said court personally or by deputy during that year.

Ans. Mostly by deputy; some of them I entered myself.

495 5. State whether the orders of the April special term and regular June term, 1859, were entered up by you or by your deputy, and if by deputy, who was that deputy?

Ans. I did not make up the orders of those terms. Mr. Barkley did the writing. Mr. Barkley copied them from the minute-books. I can't say whether he was my deputy at that time or not.

6. Was it done under your supervision and direction?

Ans. It was.

7. Were any of the orders entered at April special and regular June terms, 1859, so entered by you or under your direction without the order and authority and direction of the county court in open session?

Ans. There was nothing put on the book except by order of the court. I presume it was an open session, but I don't recollect.

8. Did you ever enter yourself or allow a deputy or other person writing orders for you to enter any order upon the records
496 without a session of court, or by any secret or private arrangement of the judges of the court when not in session?

Ans. Not to my knowledge.

9. I would ask you to look at the order-book of the county court of Wayne County, now before you, and at the order entered therein at April special term, begun and held at the court-house in Fairfield on the 20th day of April, 1859, and state if that order was made and directed to be entered by the county court of Wayne County in session, or is that entry a forgery?

Ans. I don't think there was any legal notice given for that session. They came to me and ordered me to enter it up, that is, Judge Wilson and Mr. Scott. I have no recollection of any legal notice being given for that term. There was no written notice given to my knowledge; I don't think there was; that is my recollection at the time.

10. Did Judges Wilson & Scott sign that order upon the record?

497 Ans. I think they did.

11. When did they sign said order on the record?

Ans. I can't tell.

12. You have just answered that no legal notice of that special term was given, so far as you recollect. I therefore now repeat the question, is that a legal order or a forgery?

Ans. I can't answer whether it is a legal order or not; two of the court came to me and ordered me to record it, and I as their clerk did it. Their names are subscribed to the order on the record, and I think in their handwriting.

13. Where was the transaction done; in the court-house or usual place of holding court? If not, where else?

Ans. I presume it was done in county clerk's office. I think it was done in the court-house.

Cross-examination by defendants' solicitor:

498 Ques. 1. Have you at this time any distinct recollection of the facts attending the entering up of said order, or when and where it was done?

Ans. I have not anything particular. I presume it was done in the office.

2. Is there anything on said record showing that any notice of the holding of said special term was given by any member of said court to the other members thereof, and to yourself as clerk, five days before the holding of said special term?

Ans. There is nothing on the record that I know of; the record does not show anything.

3. Is it your recollection now that five days' notice of the holding of said special term was given to the members of said court, and to yourself as clerk?

Ans. I don't recollect of any notice.

4. When were the regular terms as fixed by law of said court to be held?

499 Ans. On the first Mondays of March, June, September, & December.

Re-examination by complainants' counsel:

Ques. Look at the record of said court now before you of the special terms held by it as follows: Decr. 27, 1858, February 18, 1860, and August 14, 1865, and state if there is any record of a notice given, if any were given, for the holding of those special terms, and state whether if it was the practice of the court or clerk to make a record of such notice?

Ans. There is no record of such notice. I don't recollect what the practice was.

J. W. BARNHILL.

In chancery.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne, ss:

I, John Keen, jr., residing at Fairfield, county of Wayne, and State of Illinois, and appointed by the judge of the circuit court of the United States in and for the southern district of Illinois a special exam-
500 iner to take testimony in the case of John W. Kennicott et al., complainants, and The Board of Supervisors of Wayne County, Illinois, et al., defendants, pending in said court on the chancery side

thereof, do hereby certify that I caused to come before me, at my office at Fairfield, Wayne County, and Stateof Illinois, on the 25th, 26th, & 27th days of November, A. D. 1873, Rigdon B. Slocumb, Edward Bonham, Samuel J. R. Wilson, William Irwin, Robert T. Forth, and Jefferson W. Barnhill, witnesses on the part of the defendants in said cause, (except Jefferson W. Barnhill, who was examined on the part of the complainants,) and on said days and at said place and between the hours of eight o'clock a. m. and eight o'clock p. m. of said days, and in the presence of John A. McClernad and Walter B. Scates, solicitors for said complainants, and A. L. Knapp a solicitor for said defendants, I proceeded to take the depositions of said Rigdon B. Slocumb, Edward Benham, Samuel J. R. Wilson, William Irwin, Robert T. Forth, and Jefferson W. Barnhill, the said witnesses being each first by me carefully examined and cautioned, and each duly sworn to testify the truth, the whole truth, and nothing but the truth in the matters in contro-
501 versy; and thereupon, in the presence of said witnesses and of said solicitors, I reduced the testimony of each of said witnesses to writing as stated by him, and as the same appears above written, and that in the presence of said solicitors I carefully read over to each of said witnesses the deposition so written, and who thereupon each, in my presence and in the presence of said solicitors, subscribed his hand thereto, as the same above appears; said deposition being taken by me in pursuance of the notice hereto attached, and in answer to questions put to said witnesses by said solicitors.

And I further certify that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in any manner in said suit or in the event thereof.

Witness my hand and seal at Fairfield aforesaid this 27th day of November, A. D. 1873.

JOHN KEEN, JR. [SEAL.]
Special Examiner.

(Indorsed:) Filed December 2d, 1873. J. A. Jones, clk.

502 In the circuit court of the United States for the southern district Ill.

NOV. 28TH, A. D. 1873.

JOHN W. KENNICOTT ET AL.
vs.
THE COUNTY OF WAYNE, STATE OF ILLINOIS. } In chancery, to foreclose mortgage.

The depositions of Alfred W. Beasley & David M. Johnson, of the city, county & State of New York, witnesses of lawful age, produced, sworn & examined upon their corporal oaths, on the 28th day of November, A. D. 1873, at the office of the subscriber, in the city, county & State aforesaid, a commissioner duly appointed by the gove'nor of the State of Illinois, and authorized to take the acknowledgment & p'oof of deeds & other instruments of writing, to be used in the said State of Illinois, & to administer oaths & affirmations, &c.

Personally appeared before me the said Alfred W. Beasley & David M. Johnson, as witnesses in a certain suit & matter in controversy, pending & undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennett et al. are plaintiffs, and the county of Wayne, State of Illinois, is defendant.

503 The said Alfred W. Beasley & David M. Johnson, being first duly sworn by me as witnesses in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matter in controversy between the said plaintiff and defendant, so far as they should be interrogated, testified and deposed as follows, viz:

Deposition of A. W. Beasley.

Question 1. State your name, age, occupation, and place of business.

Alfred W. Beasley; aged thirty-six, (36;) place of business, No. 11 Wall st., New York; business, dealer in municipal bonds.

Question 2d. How long have you been engaged in the purchase and sale of bonds?

Something over three (3) years.

Question 2d. Examine Exhibit A, and state whether the said bond would have had any market-value without the completion of the said railroad, or a portion of the same, substantially complete.

504 I am satisfied that no reliable bond-dealer would have offered said bonds for sale unless a portion of the road was completed, and also have every reasonable assurance that the road would be completed entirely in good faith. Without these requisites they could have had no market-value.

4th. What are the necessary requisites in order to put a railroad or municipal security on the market?

In regard to railroad bonds, it is necessary that the road should be duly chartered; that the charter authorized the issuing of the bonds; that they are issued in conformity to the charter; and that the road is partially built, and being pushed to completion in good faith by good, strong parties; and further, that the road is likely to prove a good, valuable, paying road, so as to be able to pay all its obligations. In case of municipal bonds, it is required that there is a constitutionally valid law authorizing issue, and that they were issued in conformity with such a law.

5. What would you have required should be done before you would have relied upon the mortgage of the lands spoken of in said Exhibit A as security for the payment of said bond?

505 I should have required that the title to said lands were legally in said trustee, Isaac Seymour; that he had properly accepted the trust, which should have been made a matter of public record.

6th. What would be required of the trustee as to the validity of said bond before it would be saleable under the last clause of Exhibit A?

It would be required that Isaac Seymour, as trustee, should legally execute a mortgage upon the railroad, its branches, all of said land and personal property belonging to the railroad company, for the benefit of the bondholders, and that the same be duly recorded in the counties where said properties are located.

ALFRED W. BEASLEY.

Subscribed & sworn to before me this 28th day of November, A. D. 1873, in the city of New York.

RUFUS K. McHARG,
A Commissioner for the State of Illinois residing in New York City.

506 *Deposition of D. M. Johnson.*

Question 1. State your name, age, occupation, and place of business.

My name is David M. Johnson, and I am a banker, doing business at 22 Nassau st., New York; I am 35 years of age.

Quest. 2. How long have you been engaged in the purchase and sale of bonds?

I have been specially engaged in the purchase and sale of municipal bonds for the last three years.

Question 3rd. Examine Exhibit A and state whether the said bonds would have had any market-value without the completion of the said railroad, or some portion substantially complete.

That would depend upon whether the condition named in the bond could have been complied with, or the records appear to show a compliance therewith.

4. What are the necessary requisit's in order to put a railroad or municipal bonds on the market with value?

507 They must be properly & legally issued and have enough property back of them to give a reasonable assurance of ultimate payment. In the case of railroads there must be a law authorizing the construction of the same.

5. What would you have required should be done before you would have relied upon the mortgage of the lands spoken of in said Exhibit A as security for the payment of said bonds?

I should want to know that the title to the lands had vested in Isaac Seymour, & that he held the same as trustee for the payment of the bonds.

6. What would be required of the trustee as to the validity of said bond before it would have been saleable under the last condition mentioned in the bond?

Seymour would have had to execute a mortgage to some one upon the road & property for the benefit of the bondholders.

D. M. JOHNSON.

508 Subscribed & sworn to before me this 28th day of November, A. D. 1873.

RUFUS K. McHARG,
Commissioner for Illinois.

I, Rufus K. McHarg, a commissioner of the State of Illinois, residing in the city, county, & State of New York, do hereby certify that, previous to the examination of the said Alfred W. Beasley & David M. Johnson, as witnesses in the said suit between the said John W. Kennett et al., plaintiff, & the county of Wayne, State of Illinois, defendant, each of the said witnesses were duly sworn by me as such commissioner to testify the truth in relation to the matters in controversy between the said John W. Kennett et al., plaintiffs, and the county of Wayne, State of Illinois, defendant, so far as he should be interrogated concerning the same; that the said depositions were taken at my office, No. 77 Cedar street, in the city, county, & State of New York, on the 28th day of November, A. D. 1873, and that after the said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses, & that thereupon the same was signed and sworn to by the said deponent before me, as such commissioner, at the place and on the

509 day & year last aforesaid.

[SEAL.] RUFUS K. McHARG,
A Commissionor for the State of Illinois residing in New York City.

EXHIBIT A.

The Mount Vernon Railroad Company acknowledges itself indebted to Isaac Seymour, or bearer, one thousand dollars, which said company hereby promise to pay on presentation of this bond to the holder hereof at the Bank of North America, in the city of New York, on the first day of May, 1874, with interest thereon at the rate of 7 per cent. per annum, semi-annually, on the first day of May and November in each year, until the said principle sum shall be paid, on presentation of the proper interest-warrants, hereto annexed, at the said Bank of North America.

This bond is one of a series of 400 of $500 each, and 600 of $1,000 each of like tenor and date, not exceeding in the whole the sum of $800,000, issued and to be issued for the purpose of construction and completion of the said railroad and the expenses incident thereto. Full payment of the principle and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee of 100,000 acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad;
510 and also, by mortgage of said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed at the in the State of this 20 day of April, A. D. 1859.

[SEAL.] (Signed) .

(Indorsed:) Filed Dec. 19, 1873. J. A. Jones, clk.

United States circuit court, southern district of Illinois.

JOHN W. KENNICOTT, JOSEPH W. WARD, Maria Myers, ex. of Austin Myers, deceased, William R. Hodges et als.,
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mt. Vernon Railroad Company.

511 GENTLEMEN: You will please to take notice that we shall examine Norman A. Smith as a witness in this case and take his deposition, de bene esse, before Kenneth G. White, esq., a United States court commissioner, at his office No. 41 Chambers street, in the city of New York, on the ninth day of December, A. D. 1873, at 10 o'clock a. m. of that day, at which time and place you are notified to appear and cross-examine said witness if you desire.

Dated Nov. 6th, 1873.

Yours, &c.,

WALTER B. SCATES &
GOODWIN, LARNED & TOWLE,
Sols. for Complts.

To Messrs. W. L. FREEMAN & KNAPP & ROBINSON,
Sols. for Defts.

Rec'd Nov. 11th, 1873, copy of the within notice.

N. L. FREEMAN,
ROBINSON, KNAPP & SHUTT,
Solors. for Dfdt.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

512 *Petition of N. A. Smith.*

Be it remembered that, on this ninth day of December, in the year of our Lord one thousand eight hundred and seventy-three, I, R. E. Stilwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Norman A. Smith, to testify and the truth to say on the part and behalf of the plaintiffs in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at Springfield, wherein John W. Kennicott, Joseph W. Ward, Maria Myers, executrix of Austin Myers, deceased, and William R. Hodges et al., are plaintiffs, and the
513 Board of Supervisors of Wayne County, Illinois, impleaded with the Mo'nt Vernon Railroad Company, defendant. And the said Norman A. Smith being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Norman A. Smith, and he did thereupon depose, testify, and say as follows, viz:

In the absence of Kenneth G. White, U. States commissioner, Mr. R. P. Hanna, counsel for the defendants, and James C. Cloyd, counsel for the plaintiff, stipulated that R. E. Stilwell, U. S. commissioner, be substituted in the place of Kenneth G. White, before whom said cause was noticed to take the testimony on the part of the plaintiffs, and that the depositions so taken have the same force and effect as if taken before said Kenneth G. White.

2. My residence is at Port Chester, Westchester County, New York. My business is that of a railroad contractor. I am acquainted with S. J. R. Wilson, of Wayne County, Illinois. My first acquaintance with him was in 1858. He was judge of probate ct. of Wayne County at that time. He was agent for the county and in this way was interested in the bonds of the Mo'nt Vernon Railroad Company, and the only
514 way, so far as I know. He obtained goods with these bonds, either by hypothecar or purchase, or as pay for delivering up bonds belonging to the county to parties having possession of the Mount Vernon Railroad, or to parties interrested in the construction of the same, and so used them for his private speculation. I acted as treasurer of the Mount Vernon Railroad Co. from 1858, when Van Duzer, Smith & Co. took hold of the enterprise, and up to 1860. During this time Van Duzer, Smith & Co. surveyed the line of the road, laid it out and graded, bridged, built culverts, purchased right of way. We got the title to the lands from the county of Wayne; got up the bonds,

having the land mortgaged as security for the bonds. We made a regular contract of bargain and sale for those lands, paying them one-half of the issue of the bonds, and all other acts pertaining to the building of a road up to 1860. I cut off the coupons from the bonds as they became due and filed them away in the company safe—that is, upon all bonds not issued, and in my possession—and so kept them until my resignation as treasurer, and then turned them over to my successor, Mr. Lewis. Mr. Myers had his bonds of one Kendrick, who had the bonds from me. I gave the bonds to Mr. Kendrick for currency on a southern bank, to be used in a contract for iron on said road. Austin Myers came to me to ascertain that Mr. Kendrick was the bona-fide
515 owner of the bonds, and I told him that I had let him have them for currency, as above stated. I saw a resolution on the minutes of the books of the Mount Vernon Railroad Company making a connection between the Mount Vernon Railroad Company and the Belleville and Fairfield Railroad Company, and was informed that such resolution was passed, and I understood and believed that such connection was made. I know that S. J. R. Wilson was the acting agent for the county, and saw his power of atty. to act, which he brought with him, which was given him by the county court.

Cross-examined by Mr. Hanna:

I was a member of the firm of Van Duzer, Smith & Co. That firm done the work I have mentioned. The work was done principally in Jefferson County. We done work in Wayne County. All the work that was done was done by the firm of Vanduzer, Smith & Co., for the Mo'nt Vernon Railroad Co. I recollect that there was an effort made to extend the Mount Vernon charter to extend into Wayne County during the legislature of 1859. There was an effort made by myself and Governor Casey, as president and treasurer of the Mount Vernon Railroad Company, to procure his charter through Wayne County, but was unsuccessful. We sent R. P. Hanna to Albion to negotiate with
516 Governor Wm. Pickering for his charter through Wayne County in 1859. He failed to make any negotiation. The last effort was made after the failure to get the Mount Vernon charter extended into Wayne County in 1859. Gove'nor Casey also went to meet Gove'nor Pickering to negotiate for his charter through Wayne County in 1859. He went at my request, and at my expense, but failed to make any negotiations for the charter. The only bonds sold by the Mount Vernon Railroad Co. that I recollect of, while acting as treasurer, were those disposed of in the iron contract of which the bonds that Mr. Myers had were a portion. The deed of trust and mortgage was executed while I was treasurer of the company. A man by the name of Lewis succeeded me as treasurer. I don't remember his first name. I turned over to Lewis all the bonds which had not been hypothecated or sold.

NORMAN A. SMITH.

Subscribed and sworn to before me this 9th day of December, 1873.

R. E. STILWELL,
U. S. Com'r for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stilwell, a commissioner duly appointed by the circuit
517 court of the United States for the southern district of New York,

in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits in civil causes depending in the courts of the United States," passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides at a greater distance than one hundred miles from the place of trial of said cause. I further certify, that a notification of the time and place of taking the said deposition was made out and served on the adverse party to be present at the taking of the said deposition, and to put interrogatories, if or they might think fit, and that a stipulation was entered into upon the record that R. E. Stilwell should be substituted in the place of Kenneth G. White as such U. S. com'r to take the deposition, as
518 K. G. White was absent from the city.

I further certify that, on the ninth day of December, in the year of our Lord one thousand eight hundred and seventy-three, I was attended by James C. Cloyd, counsel for the plaintiff, and R. C. Hanna, counsel for the defendant, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness; and, from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence; I have retained the said deposition in my possession for the purpose of mailing the same to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this ninth day of December, in the year of our Lord one thousand eight
519 hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] R. E. STILWELL,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

(Indorsed:) Filed the 11th day of Dec., 1873. J. A. Jones, clk.

In the circuit court, January term, A. D. 1874.

UNITED STATES OF AMERICA,
Southern District of Illinois:

JOHN W. KENNICOTT AND OTHERS
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois. } In chancery.

To Messrs. Robinson, Knapp and Shutt, solicitors for defendants:

GENTLEMEN: You are hereby notified that we shall examine Joseph G. Barkley as a witness, and take his deposition to be read on the

520 trial of the above cause on the part of the complainant, before John Keene, jr., a United States commissioner, at his office in the town of Fairfield, Wayne County, and State of Illinois, on the 15th day of December, A. D. 1873, between 8 o'clock a. m. and 8 o'clock p. m. of the said day, and at the same hours from day to day until the deposition aforesaid is finished, when and where you can attend and cross-examine said witness, if you see proper.

Dated November 27th, 1873.

SCATES AND McCLERNARD,
Solicitors for Complainants.

Received copy of the within notice this 27th day of November, A. D. 1873.

ROBINSON, KNAPP & SHUTT,
Solrs. for Dfdts.

Deposition of Joseph G. Barkley.

Chancery.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne:

The depositions of Joseph G. Barkley, taken before me, John Keen, jr., a special examiner appointed by the judge of the circuit court of the United States in and for the southern district of Illinois, in the case pending in said court on the chancery side thereof, wherein John W. Kennicott et al. are complainants, and the Board of Supervis-
521 ors of Wayne County, Illinois, et al., are defendants, said deposition being taken before me at my office in Fairfield, Wayne County, Illinois, on the 15th day of December, A. D. 1873, between the hours of eight o'clock a. m. and eight o'clock p. m. of said day, and in the presence of James McCartney, acting as solicitor for the complainants, and Samuel J. Q. Wilson, acting for the defendants, and in pursuance of the notice hereunto attached.

JOSEPH G. BARKLEY, being first by me carefully examined & cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

Ques. 1st. What is your name, age, and place of residence?

Ans. Joseph G. Barkley; age, 69 years; residence, Fairfield, Wayne County, Illinois.

Q. State if you have examined the records of the county court of Wayne County for the year 1859; and, if so, state what record you find made as of the April special term, A. D. 1859; who entered the same; by whose order was it done, and who signed it?

Ans. I have a part of them. I find at the special term of April 20th, 1859, an order in my handwriting, which order I entered for J. W. Barnhill, the county clerk, which order was signed by Samuel J. R. Wilson and Thomas Scott.

522 Q. State in what book that order is found; what is the purport of the order, and what position does it occupy in the record with reference to the proceedings of previous and subsequent terms?

Ans. It is one of the books in which the regular orders of the county court are entered. It is in reference to a deed of trust executed to Isaac Seymour of New York, to certain swamp lands lying in Wayne County, and also a mortgage on the same lands to Isaac Seymour as collateral

security to enable the Mt. Vernon Railroad Company to secure money to build a railroad from the eastern boundary of Wayne County to Mt. Vernon in Jefferson County. It occupies the proper place in the book between the regular March & June terms of said court.

4. You misunderstand my meaning as to the purport of what the entry referred to was. What I mean is: What does the entry appear to be made for on the 20th April, 1859; what does it show as being the entry of; what was it put upon the book for?

Ans. It was intended to be put upon the record as the order of the court.

J. G. BARKLEY.

523 Defendants except to questions two to four, inclusive, and to the answer of Joseph G. Barkley thereto, as being incompetent, irrelevant, and improper & leading, and that they attempt to prove the contents of a record.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne:

I, John Keen, jr., residing at Fairfield, in the county of Wayne and State of Illinois, and appointed by the judge of the circuit court of the United States of America, in & for the southern district of Illinois, a special examiner to take testimony in the case of John W. Kennicott et al., complainants, and the Board of Supervisors of Wayne County, Illinois et al., defendants, pending in said court on the chancery side thereof, do hereby certify that I caused to come before me at my office at Fairfield, Wayne County, Illinois, on the 15th day of December, A. D. 1873, Joseph G. Barkley, a witness on the part of the complainant in said cause, & on said day, & at the place & between the hours of eight o'clock a. m. & eight o'clock p. m. of said day, and in the presence of James McCartny, esq., a solicitor acting for the complainant, and Samuel J. R. Wilson, esq., acting for the defendant in this particular case, I proceeded to take the depositions of Joseph G. Barkley, the said witness being by me carefully examined & cautioned & duly sworn to testify the truth, the whole truth, and nothing but the truth in the matters in controversy, & thereupon, in the presence of said acting
524 solicitors, I reduced the testimony of said witness to writing as stated by him and as the same appears above written, & that in the presence of said solicitors I carefully read over to said witness the depositions so written, and who thereupons in my presenes & in the presence of said solicitors, subscribed his name thereto as the same above appears; said deposition being taken by me in pursuance of the notice hereto attached & in answer to question put said witnesses by said solicitors; and I further certify that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in any manner in said suit or in the event thereof.

Witness my hand and seal at Fairfield aforesaid this 15th day of December, A. D. 1873.

JOHN KEEN, JR., [SEAL.]
Special Examiner.

(Indorsed:) Filed Dec. 26, 1873. J. A. Jones, clk.

Affidavit of T. H. Crego.

STATE OF ILLINOIS,
County of Cook, ss:

Thomas H. Crego, of said county, being first duly sworn, saith on oath

that Roxanna Crego, of the city of Boston, is the owner of construc-
525 tion bond No. 278, of the Mount Vernon Railroad Company for the sum of five hundred dollars; that she acquired the same for a valuable consideration by her in hand paid in good faith and in the usual course of business, and that she is still the owner and holder of the same.

THOS. H. CREGO.

Subscribed in my presence & sworn to before me this 29th day of May, A. D. 1874.

[SEAL.]

H. C. WHITNEY,
Notary Public in & for Cook County aforesaid.

Have Mr. Thos. H. Crego answer the following questions:

1. Who is Roxanna Crego & where does she live?
2. When did she become the owner of the bond in question, & how?
3. From whom did she obtain it?
4. What did she give for it & in what was payment therefor made?
5. Do you know these facts of your own knowledge, or do you speak from what she has told you?

6. Did she, when she bought this bond, know anything of the
526 lands in Wayne County mortgaged to secure these bonds?

Deposition of T. H. Crego.

STATE OF ILLINOIS,
County of Cook:

THOMAS H. CREGO, being first duly sworn, saith on oath, in answer to the annexed interrogatories as follows, to wit:

To interrogatory first. Roxanna Crego is a widow lady, the mother of affiant, and resides at Boston.

To interrogatory second. She became the owner of the bond in question on June 4th, 1864, having inherited the same as widow and heir at law of Hiram Crego, her husband, who died on that day.

To interrogatory third. Said bond was deposited at Boston among effects of said Hiram Crego, & she came into possession of it as his widow & heir at law.

To interrogatory fourth. Roxanna Crego paid nothing; Hiram Crego from whom she inherited it paid five hundred dollars in real estate at Boston first; said real estate being estimated at its cash value of two hundred dollars.

To interrogatory fifth. This affiant knows all the above facts of his own personal knowledge and not from what said Roxanna Crego has told him.

527 To interrogatory sixth. This affiant doth not know anything about the lands mortgaged to secure payment of the bonds in question, nor did the said Hiram Crego know anything about them, nor doth the said Roxanna Crego know anything about them.

THOS. H. CREGO.

Subscribed in my presence, & sworn to before me this 1st day of June, 1874.

H. C. WHITNEY,
Notary Public for Cook County, Ills.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

X-examination of R. P. Glenn.

Cross examination of Richard P. Glenn by defendants' solicitor.

We owned these bonds jointly, and got them all at the same time in the year 1864. They are in just the same condition with reference to coupons as when we first got them, and we have owned them ever since. We obtained them in Southwest Georgia, of a trader named Baker. Baker merchandized and traded in negroes and farms and money. We gave the face for these bonds in trade. We traded whisky for the
528 bonds, and paid dollar for dollar with the interest calculated on them. We paid for them in whisky. We gave, perhaps, seventy or eighty barrels of whisky for these bonds, perhaps not more than sixty. Whisky estimated at gold basis about two and a half or three dollars a gallon. Bonds estimated also at a gold basis. My business was a trader. Mr. Sprayberry was also trading at the time. I have never bought any other railroad bonds before. I knew nothing about the situation of the Mt. Vernon Railroad Company at the time. I did know whether Mt. Vernon Railroad was actually built. I saw there was one marked on the map, and was told on inquiry there was such a one. I knew nothing about these lands in Wayne County at the time of purchase of these bonds. I had never been in Illinois. I don't know whether Mr. Sprayberry had. I never made any attempt to collect the coupons on these bonds after I got them, but presented them at the bank in New York, in 1866, and the bank refused to pay them, having no funds for that purpose. I came out to Mt. Vernon last spring to see about these bonds. I had written out several times, but got no information. I wrote to somebody in Mt. Vernon. He could give me no informatiom; said he knew nothing about them. He stated there was such an institution but it was non est then. I delivered the whisky for these bonds at Cuthbert, Georgia, and either there or Macon, got these bonds. I made most of this whisky at my distillery, in Macon. The whisky belonged to me and Sprayberry, jointly.

529 (NOTE.—At this part the witness retired with his counsel.)

Mr. Sprayberry was a tradesman, a lawyer too, and we did a great deal of trading together. I never had a written contract with anybody in my life to trade together. I had a partner in one transaction, and another in another transaction to-morrow. Sprayberry and I traded together at the time the whisky was given for the bonds. Sprayberry is now in Atlanta, Georgia. If I didn't make all this whisky I can't tell where I got the balance. Sprayberry and I have been dealing together since this transaction. I was living at Clarksville, Tennessee, when I got these bonds, and I traded all through the South. I have lived in Macon, Atlanta, Memphis, & Nashville. I had no regular place of doing business at the time I got these bonds. I owned the distillery at Macon, at the time this whisky was made, and this whisky was made at about the time the trade was made for the bonds. The distillery was situated in the southeast part of the suburbs of Macon. I owned it and run it about two years. I bought of a fellow named Peter Shone. Sprayberry had no interest in this distillery. These bonds have been together ever since, in either Sprayberry's or my possession.

R. P. GLENN.

Subscribed and sworn to before me this 30th day of May, A. D. 1874.

J. A. JONES,
M. C. U. S. C. C. S. D., Ills.

530 This deposition was taken by consent & notice waived.

ROBINSON, KNAPP & SHUTT.
Sol'c'rs for Df'd'ts.

Deposition of R. P. Glenn.

Circuit court of the United States, southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } In chancery.

Personally appeared before me, John A. Jones, master in chancery, U. S. circuit court for the said southern district of Illinois, at my office in Springfield, in said district, this 18th day of April, A. D. 1874, Richard P. Glenn, who, being first duly sworn, saith as follows:

Int. 1. What is your name, age, and residence?

Ans. Richard P. Glenn; 48 years old, and residence, Memphis, Tennessee.

Int. 2. Please examine bonds here shown you by me, as master in chancery, and state how many there are of said bonds in number, also the denomination and face value of each of said bonds, the date thereof, and when they are made payable.

531 I have examined; there are eleven of said bonds; they are all of the denomination of one thousand dollars each, and all bearing date, April 20th, 1859, and all made payable the 1st of May, 1874, and numbered 39, 41, 43, 66, 75, 76, 77, 78, 80, 84, & 90.

Int. 3. What is the description by title or name of said bonds?

Ans. Mount Vernon Railroad Company construction bonds.

Int. 4. Are there any coupons or interest-warrants attached to said bonds; and, if so, how many are attached to each, and what the amount called for by each; what the date of each, and when the said coupons are made payable?

Ans. There are coupons or interest-warrants attached; twenty-seven coupons are attached to each bond, each coupon for thirty-five dollars. I presume the date of the bonds stands for the date of the coupons; they are made payable semi-annually on the first of May and the first of November of each year.

Int. 5. By whom do the said bonds appear to have been signed?

532 Ans. By Z. Casey, president, and Norman A. Smith, treasurer. J. Seymour, trustee. And the bonds appear to be under the seal of the Mount Vernon Railroad Company.

Int. 6. By whom do the said coupons appear to have been signed?

Ans. By A. M. Grant, secretary.

Int 7. Who are the owners and holders of said bonds and coupons?

Ans. Hamilton J. Sprayberry and R. P. Glenn.

Int. 8. How did they acquire them and how do they hold them?

Ans. They acquired them in the ordinary course of trade for a valuable consideration in open market, and hold them jointly and equally in good faith and so acquired them.

RICHARD P. GLENN.

Subscribed & sworn to before me this 18th April, A. D. 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed April 18, 1874. J. A. Jones clerk.

533 *Affidavit of C. A. Boardman.*

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } In chy.

Charles A. Boardman, being first duly sworn, deposes and says that I am an attorney in fact for Isaac Taylor, one of the complainants in this case, and know that he is the owner of construction-bond No. 76, for $500.00, of the Mount Vernon Railroad Company. I saw him purchase it and pay value for it.

Cross-examination:

He purchased this bond during this present week. He purchased it of a man named West, of Lowell, Massachusetts, for fifty dollars in cash.

C. A. BOARDMAN.

Subscribed and sworn to before me this 30th May, A. D. 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 30, A. D. 1874. J. A. Jones, clk.

Affidavit of J. W. Kennicott.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } In chancery.

534 John W. Kennicott, one of the original complainants, being first duly sworn, deposes and says: That I am the owner of bonds No. 14, 15, 34, 212, 252, & 254, of $500.00 each, and twenty-seven coupons thereto attached. I bought 2 of those bonds of Wm. P. Emerson; I bought four of these bonds of Dr. N. A. Smith in the usual course of business and paid value for them. I was in the employ of Wm. P. Emerson, and made the transaction by which he became the owner of the bonds in this suit in his name; he acquired them in the usual course of business and pianos for them. He was a manufacturer of pianos.

In reference to Mr. Burnett, one of the original complainants, I know he acquired his bonds in the usual course of business for value. I borrowed some money for Mr. Emerson from Burnett. Mr. Emerson was a little straighten'd for money matters and he asked Mr. Burnett to buy some of these bonds, and whatever bonds Mr. Burnett has he got in that way of Mr. Emerson.

Cross-examination:

I got my bonds about 2 years before the suit was begun, I should think. I had them in 1863. I bought 2 of Mr. Emerson for $300.00 each, for $500.00 bonds. The 4 I got of Norman A. Smith I got in an exchange for a piano with him. The coupons now on them were on them then.

535 As to Emerson's bonds I am not able to state whom he got them from; one I think from a lady, a portion of them from a man named Fitzgerald, and some in exchange for pianos with Dr. N. A. Smith. Emerson got his bonds, I think, before I got mine.

As to Burnett's bonds, he got them of Emerson, but am not able to state what he paid for them.

When we got these bonds we did not know what condition the Mount Vernon Railroad Company was in. Mr. Seymour told me the bonds were good. I knew nothing at that time about the Wayne County swamp-lands.

Re-examination:

I had seen Mr. Isaac Seymour at the bank in New York three or four times in 1863 & 1864. Mr. Isaac Seymour was the trustee in this case. He was a bank-man, cashier of the Bank of North America, and I went to him as a business-man. I enquired of him fully in regard to these bonds. He said he had accepted this trust to oblige a friend, but did not tell me who that party was. He told me the bonds were amply secured; that the security was a mortgage on a hundred thousand acres of land in Wayne County; that the land was ample to secure the payment of the bonds—$800,000.00 of bonds. At that time I had but 2 or 3 of these bonds, and he told me that it was a safe investment; on the
536 strength of that I bought more. Mr. Seymour I had always heard spoken of as a financial man, as at the head of the profession in New York. I left D. L. Phillips my bonds and took his receipt for them. I don't know where the bonds are. I asked Mr. Phillips for them, and he said they could nowhere be found. I still hold Mr. Phillips' receipt for them, and still own the bonds. They were put in Mr. Phillips' hands in Boston with others, with the direction to Mr. Phillips to employ attorneys and bring suit on the bonds, and Mr. Phillips accordingly employed counsel and filed the bill herein, declaring upon my bonds with others. The following is a copy of the receipt:

"Rec'd of J. W. Kennicott. Mount Vernon Railroad bonds numbered as follows, and in sums as noted, with twenty-seven coupons attached to each bond for seventeen $\frac{50}{100}$ dollars each:

"No.	14	$500 00
	15	500 00
	34	500 00
	212	500 00
	252	500 00
	254	500 00

"Said bonds and coupons to be collected in the courts of Ill.

"Boston, Mass., March 1st, '64.

"(Signed) D. L. PHILLIPS.

"Said bonds to be accounted for to said Kennicott or his order."

537 I have examined the paper here shown to me and am acquainted with John M. Whiting's handwriting. I had occasion to correspond with him several years ago for some time. The answers to the questions propounded herein and the letter over his signature are in his handwriting, (which letter is hereto attached, marked Exhibit A.) I am acquainted with John H. Brown, a witness in this cause. He was an original party to this bill.

JOHN W. KENNICOTT.

Subscribed and sworn to before me this 30th May, A. D. 1874.

J. A. JONES, *Clk.*

EXHIBIT A.

NEW YORK, *April* 25, '61.

JOHN N. WHITING, Esq.:

DEAR SIR: Will you please affix your answers & opinion to the annexed questions, & oblige

Your most obed't servant,

CHAS. W. LEWIS.

Can the bonds I hold as security for my advances to the com'p'y be by me located & deed for same held in my name?	They can, if the survey, &c., is made.
Is there any hole or corner by which the people of the 538 county or State can, by any act of any description whatever, prejudice the claim or question the title of any bondholder whose bond I may recognize & Mr. Seymour give a deed for?	So far as I can learn from Illinois lawyers & others, as well as from my own opinion on the facts submitted, there is not.
Is the land mortgaged & must that be foreclosed, or has Mr. Seymour a clear and indisputable title?	Mr. Seymour takes title in trust to convey to lawful holders.
If (say Mr. Seymour) for example bought my bonds legally, would their title be prejudiced?	I do not see how any bona-fide purchaser's title can be prejudiced.

C. W. LEWIS, Esq.:

DEAR SIR: I have answered the foregoing questions on the first page. On the 15th page of the pamphlet you will see the method of realizing from sale of the land to be clearly pointed out as to the terms of the trust. On the 22d & 23d pages, the conveyance, &c, of the land is provided for.

Yours, truly,

J. N. WHITING.

25 M'ch, 1861.

(Indorsed:) Filed May 30th, A. D. 1874. J. A. Jones, clk.

539 *Affidavit of J. H. Brown.*

U. S. circuit court, southern district Illinois.

UNITED STATES OF AMERICA,
State of Ill.:

John H. Brown, of Boston, Mass'tts, being first duly sworn, deposes and says that Isaac Taylor, of Boston, Mass'tts, is a bona-fide holder and owner of the following-described construction-bonds of the Mt. Vernon Railroad Co. of Illinois, to wit, bonds numbered 115, 116, of $500 each, coupons attached; do. do. 23, 29, 282, 283, 284, 285, 286, & 394, of $1,000 each, coupons attached; that he acquired the same in the usual course of business in trust security; and that he paid a valuable consideration therefor in good faith.

JOHN H. BROWN.

Subscribed and sworn to before me this May 30, 1874.

J. A. JONES, *M. C.*

U. S. circuit court, southern dist. Illinois.

UNITED STATES OF AMERICA,
State of Ill.:

540 John H. Brown, of Boston, Mass'tts, being first duly sworn, deposes & says that he, as trustee, is a bona-fide holder & owner of the following-described construction bonds of the Mt. Vernon Railroad Co. of Illinois, to wit: Bonds numbers 2, 20, 24, of 500 each, coupons attached; bonds numbers 8, 122, 366, of $1,000 each, coupons attached; also detached coupons of bonds $500 each, numbered as follows: Coupons 4, 5, bond No. 22; coupons 5, bond No. 77; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 130; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 133; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 207; coupons 4, 5, 6, 7, 8, 9, 10, of bond 219; coupons 4, 5, of bond No. 257; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 383; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 388; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 391; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 392; coupons 4, 5, 6, 7, 8, 9, 10, of bond No. 395; also coupons of bonds for $1,000 each, to wit: Coupons 4, 5, of bond No. 119; coupons 4, 5, of bond No. 120; coupons 4, 5, of bond No. 122; coupons 4, of bond No. 144; coupon 4, of bond 473.

JOHN H. BROWN.

Subscribed and sworn to before me this 30th May, A. D. 1874.
J. A. JONES, *M. C.*

Cross-examination of J. H. Brown by defendants' solicitor:

541 I hold these bonds for parties in Boston as trustee. The detached coupons are the property of Mrs. Catherine Bailey, & resides at Lawrence, Massachusetts. She has a husband living. I am the trustee and attorney of estate of Mrs. Magoun, who is now Mrs. Catherine Bailey. I sold some stocks belonging to this estate, and as trustee and administrator of the same took these coupons in part pay some six or seven years ago. The amount of these detached coupons is about $1,470.00. I don't think I could tell whom I get these coupons of. I sold some coal stock of some coal company in Pennsylvania, and took these coupons as part pay. Can't tell where this coal company was located, and can't tell just what I allowed for these coupons, but did allow something.

William R. Gray, of Boston, owns bond No. 20, $500.00. He is a mortgage-broker, and got this bond six or seven years ago, and paid face for it, to the best of my knowledge and belief; I can't state of my own positive knowledge what Mr. Gray paid for this bond.

Bonds numbered 8 & 366, for $1,000 each, and No. 2 & 24, for $500 each, belong to H. B. Cushing, of Boston. He became the owner of these bonds several years ago. He got them of A. B. Warren, to the best of my knowledge & belief. I was not present when the bonds were bought, but they both told me so. I don't know what was paid for them.

Bond No. 122, for $1,000.00, is the property of Isaac Taylor, a merchant of Boston. He got it within three or four years. I could
542 say what he paid for it. It was a cash consideration.

Bonds 115 & 116, herewith presented, for $500.00 each; 23, 29, 282, 283, 284, 285, 286, & 394, for $1,000.00 each, are the property of Isaac Taylor, of Boston. I couldn't say when he got the bonds. To the best of my knowledge and belief, he paid a valuable consideration for them. I never saw Mr. Taylor pay anything for these bonds. I was not with him when he purchased them.

(NOTE.—Defendants' counsel objects to any testimony in the way of hearsay.)

Examined by complainant's solicitor:

I bought and paid for all the bonds that I had in this suit in which I am interested. I am now speaking of the bonds already in suit in the third amended bill.

Cyrus Wakefield, one of the original parties to this suit, acquired his bonds in suit by him in the usual cou'se of business for value. He was an importer and manufacturer in Boston, and is now deceased.

Cross-examination:

543 The bonds I hold as my own I obtained some seven or eight years ago, and they are in the same condition with reference to coupons as when I got them. I couldn't tell of whom I got them. They cost me from 25 to 75 cts. on the dollar. I paid for them in money and real estate. Some I paid 42 cents for in cash. When I bought these bonds I knew there was such a road as the Mount Vernon Railroad in process of construction and nearly finished. I knew nothing about the value of Wayne County swamp-lands, but made inquiries of Isaac Seymour and through him got my information. Wakefield got some of his bonds from me. He paid several thousand dollars in cash and other personal securities. I don't know whom he got the others of; some he got of me. I don't know of my own knowledge whether he paid anything for the bonds he got from others.

JOHN H. BROWN.

Subscribed and sworn to before me this 30th May, 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 30, 1874. J. A. Jones, clk.

UNITED STATES OF AMERICA,
Southern District of Illinois:

544 *Deposition of Downing Baugh.*

In the circuit court, January term, 1874.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, &c. } In chancery.

To Walter B. Scates, Goodwin, Larned & Towle, & McClernard & Broadwell, solcrs. for complts.:

GENTLEMEN: You are hereby notified that we shall examine Downing Baugh, esq., as a witness in the above cause, and take his deposition, to be read on the trial of said cause on the part of the defendants, before G. Henry Freese, esq., a special commissioner appointed for that purpose, at his office in the town or city of McGregor, Clayton County, State of Iowa, on the 26 day of November inst., A. D. 1873, between 8 o'clock a. m. & 8 o'clock p. m. of said day, and continue until the same is finished, when & where you can attend and cross-examine said witness if you see proper. Dated Nov. 13, 1873.

N. L. FREEMAN &
ROBINSON, KNAPP & SHUTT,
Solcrs. for Dfdts.

Received a copy of the within notice Nov. 14th, 1873.
S. A. GOODWIN,
WALTER B. SCATES,
545 *Attorney for all of the complainants except W. R. Hodges.*

We hereby acknowledge service of this notice, Nov. 14th, 1873.
McCLERNAND & BROADWELL,
Sols. for Hodges.

UNITED STATES OF AMERICA,
The State of Iowa, County of Clayton:

The deposition of Downing Baugh, esq., taken before me, G. Henry Freese, a special examiner, appointed by the judges of the circuit court of the United States in and for the southern district of Illinois, in the case pending in said court on the chancery side thereof, wherein John W. Kennicott et al. are complainants and the Board of Supervisors of Wayne County, Illinois, et al., are defendants, said deposition being taken before me at my office in the city of McGregor, county and State aforesaid, on the 26 day of November, A. D. 1873, between the hours of eight o'clock a. m. and eight o'clock p. m. of said day, and in the presence of Robert P. Hanna, esq., a solicitor for said defendants, in pursuance of a notice hereto attached, no person appearing or being present on behalf of said complainants.

DOWNING BAUGH, esq., being first by me lawfully examined, and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

546 My name is Downing Baugh; my age is seventy-five years; and I reside in the city of McGregor, Clayton County, and State of Iowa. I remember of being at a railroad meeting, I think in the year 1854 or 1855, over Joel Pace's store, in the town of Mount V erson County, and State of Illinois. I forget who was presi meeting; I was the secretary. There were several present, a Walter B. Scater, of Mt. Vernon, Genl. William Pickering, three other gentlemen from Albion.

The main object of the meeting, as I recollect it, was to procure from Genl. Pickering his interest in the railroad and right of way, commencing at Mount Carmel and running west in the direction of Fairfield, which he was said to have bought some time previous for two hundred and fifty dollars. Genl. Pickering asked, I think, at first, for the road and franchise, sixty thousand dollars, which we utterly refused to give. After a great deal of higgling, he proposed to take thirty thousand dollars, which we also refused to give. The conference broke up, and Genl. Pickering and his friends went home. I was secretary of said meeting, but don't remember whether any records of said meeting were kept, as the meeting didn't amount to anything. I was secretary of the Mount Vernon Railroad Company, as I remember, from its first organization, until

547 the year 1857, and had charge of the books and records of said company, and was present at their meetings. The books and records of said office were very few. There never was any consolidation made between the Mount Vernon Railroad Company and the Fairfield and Belleville Railroad Company; of this I am confident. The only attempt that I recollect of being made to consolidate was the one referred to over Pace's store, and that broke up and amounted to nothing. No consolidation was then accomplished. I continued to be the secretary of the Mount Vernon Railroad Company until 1857, as I recollect, and was

(NOTE.—Defendants' counsel objects to any testimony in the way of hearsay.)

Examined by complainant's solicitor:

I bought and paid for all the bonds that I had in this suit in which I am interested. I am now speaking of the bonds already in suit in the third amended bill.

Cyrus Wakefield, one of the original parties to this suit, acquired his bonds in suit by him in the usual cou'se of business for value. He was an importer and manufacturer in Boston, and is now deceased.

Cross-examination:

543 The bonds I hold as my own I obtained some seven or eight years ago, and they are in the same condition with reference to coupons as when I got them. I couldn't tell of whom I got them. They cost me from 25 to 75 cts. on the dollar. I paid for them in money and real estate. Some I paid 42 cents for in cash. When I bought these bonds I knew there was such a road as the Mount Vernon Railroad in process of construction and nearly finished. I knew nothing about the value of Wayne County swamp-lands, but made inquiries of Isaac Seymour and through him got my information. Wakefield got some of his bonds from me. He paid several thousand dollars in cash and other personal securities. I don't know whom he got the others of; some he got of me. I don't know of my own knowledge whether he paid anything for the bonds he got from others.

JOHN H. BROWN.

Subscribed and sworn to before me this 30th May, 1874.

J. A. JONES, *M. C.*

(Indorsed:) Filed May 30, 1874. J. A. Jones, clk.

UNITED STATES OF AMERICA,
Southern District of Illinois:

544 *Deposition of Downing Baugh.*

In the circuit court, January term, 1874.

JOHN W. KENNICOTT ET AL.
vs.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, &c. } In chancery.

To Walter B. Scates, Goodwin, Larned & Towle, & McClernard & Broadwell, solcrs. for complts.:

GENTLEMEN: You are hereby notified that we shall examine Downing Baugh, esq., as a witness in the above cause, and take his deposition, to be read on the trial of said cause on the part of the defendants, before G. Henry Freese, esq., a special commissioner appointed for that purpose, at his office in the town or city of McGregor, Clayton County, State of Iowa, on the 26 day of November inst., A. D. 1873, between 8 o'clock a. m. & 8 o'clock p. m. of said day, and continue until the same is finished, when & where you can attend and cross-examine said witness if you see proper. Dated Nov. 13, 1873.

N. L. FREEMAN &
ROBINSON, KNAPP & SHUTT,
Solcrs. for Dfdts.

Received a copy of the within notice Nov. 14th, 1873.

S. A. GOODWIN,
WALTER B. SCATES,
545 *Attorney for all of the complainants except W. R. Hodges.*

We hereby acknowledge service of this notice, Nov. 14th, 1873.

McCLERNAND & BROADWELL,
Sols. for Hodges.

UNITED STATES OF AMERICA,
The State of Iowa, County of Clayton:

The deposition of Downing Baugh, esq., taken before me, G. Henry Freese, a special examiner, appointed by the judges of the circuit court of the United States in and for the southern district of Illinois, in the case pending in said court on the chancery side thereof, wherein John W. Kennicott et al. are complainants and the Board of Supervisors of Wayne County, Illinois, et al., are defendants, said deposition being taken before me at my office in the city of McGregor, county and State aforesaid, on the 26 day of November, A. D. 1873, between the hours of eight o'clock a. m. and eight o'clock p. m. of said day, and in the presence of Robert P. Hanna, esq., a solicitor for said defendants, in pursuance of a notice hereto attached, no person appearing or being present on behalf of said complainants.

DOWNING BAUGH, esq., being first by me lawfully examined, and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

546 My name is Downing Baugh; my age is seventy-five years; and I reside in the city of McGregor, Clayton County, and State of Iowa. I remember of being at a railroad meeting, I think in the year 1854 or 1855, over Joel Pace's store, in the town of Mount Vernon, Jefferson County, and State of Illinois. I forget who was president of the meeting; I was the secretary. There were several present, among them Walter B. Scater, of Mt. Vernon, Genl. William Pickering, and two or three other gentlemen from Albion.

The main object of the meeting, as I recollect it, was to procure from Genl. Pickering his interest in the railroad and right of way, commencing at Mount Carmel and running west in the direction of Fairfield, which he was said to have bought some time previous for two hundred and fifty dollars. Genl. Pickering asked, I think, at first, for the road and franchise, sixty thousand dollars, which we utterly refused to give. After a great deal of higgling, he proposed to take thirty thousand dollars, which we also refused to give. The conference broke up, and Genl. Pickering and his friends went home. I was secretary of said meeting, but don't remember whether any records of said meeting were kept, as the meeting didn't amount to anything. I was secretary of the Mount Vernon Railroad Company, as I remember, from its first organization, until
547 the year 1857, and had charge of the books and records of said company, and was present at their meetings. The books and records of said office were very few. There never was any consolidation made between the Mount Vernon Railroad Company and the Fairfield and Belleville Railroad Company; of this I am confident. The only attempt that I recollect of being made to consolidate was the one referred to over Pace's store, and that broke up and amounted to nothing. No consolidation was then accomplished. I continued to be the secretary of the Mount Vernon Railroad Company until 1857, as I recollect, and was

conversant with its affairs, and never heard of any consolidation with the Fairfield and Belleville Railroad Company, or any other railroad company. I have an impression that there were persons there from Belleville and Nashville, at the meeting above referred to over Pace's store. The office of the Mount Vernon Railroad Company was always at Mount Vernon, Jefferson County, Illinois, while I remained there.

D. BAUGH.

UNITED STATES OF AMERICA,
The State of Iowa, County of Clayton, ss:

I, G. Henry Freese, residing at the city of McGregor, county of Clayton, State of Iowa, and appointed by the judge of the circuit court of
548 the United States in and for the southern district of Illinois, a special examiner to take testimony in the case of John W. Kennicott et al., complainants, and the Board of Supervisors of Wayne County, Illinois, et al., defendants, pending in said court, on the chancery side thereof, do hereby certify that I caused to come before me, at my office, in the city, county, and State aforesaid, on the 26th day of November, A. D. 1873, Downing Baugh, esq., a witness on the part of the defendants in said cause; and on said day, and at the place aforesaid, between the hours of eight o'clock a. m. and eight o'clock p. m. of said day, and in the presence of Robert P. Hanna, a solicitor on the part of the said defendants, no person appearing or being present on behalf of said complainants, I proceeded to take the deposition of said witness, the said witness being first by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy; and thereupon, in the presence of said witness and of said solicitor, I reduced the testimony of said witness to writing, as stated by him, and as the same appears above written; and that, in the presence of said solicitor, I carefully read over the said deposition so written to said witness, and who thereupon, in my presence, and in the presence of said solicitor, sub-
549 scribed his name thereto, as the same above appears; said deposition being taken by me in pursuance of the notice hereto attached, and in answer to questions put said witness by said solicitor. And I further certify that I am not of counsel or attorney for either of the parties to said suit; nor am I interested in any manner in said suit, nor in the event thereof.

Witness my hand and seal at McGregor aforesaid, this 26th day of November, A. D. 1873.

[SEAL.] G. HENRY FREESE,
Special Examiner and Notary Public in and for Clayton Co., Iowa.

(Indorsed:) Filed Dec. 12th, A. D. 1873. J. A. Jones, clk.

550 *Affidavit of R. P. Hanna.*

In the circuit court, June term, A. D. 1874.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

JNO. W. KENNICOTT ET AL.
v.
BOARD OF SUPERVISORS OF WAYNE COUNTY et al.

Robert P. Hanna, being duly sworn, on oath says that he is one of

the solicitors for the defendant in the above-entitled cause, and acting as such solicitor in May, 1874, superintended the taking of the deposition of Norman A. Smith, now on file in this case; that he has heard read the affidavit of said Smith made this day, and says that he never heard of the matters and things in said affidavit set forth until after the aforesaid deposition of said Smith had been closed and finished, and it was then too late to re-examine the said Smith; that he thereupon requested said Smith to come on to Springfield, Illinois, and attend at the hearing of this cause and give his evidence further, which said Smith promised to do and has done; that a few days ago, in answer
551 to a dispatch from him, one Charles A. Beecher, esq., who is also of counsel herein for defendant, telegraphed said Smith that if he was here on Friday, June 19, 1874, it would be sufficient; and further he says not.

R. P. ANNA.

Subscribed & sworn to before me this 20th day of June, A. D. 1874.
J. A. JONES, *Clk.*

(Indorsed:) Filed June 20, 1874. J. A. Jones, clk.

552 In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE CO., ILLINOIS, impleaded, &c. } In equity.

To N. L. Freeman and A. L. Knapp, esqrs., counsel for defendants:

Please to take notice that on Saturday, 23d May inst., between the legal hours of said day, and continuing from day to day if necessary, at the office of the clerk of the U. S. circuit court at St. Paul, Minnesota, I shall take the deposition of Nathan H. Streeter, to be used in evidence before J. A. Jones, esq., master in chancery of said court in the above-entitled cause, upon the reference made to him therein, when and where you can attend and cross-examine if you so elect.

W. B. SCATES,
Sol. for Complts.

Recd. copy of the above May 13, 1874.

A. L. KNAPP &
N. L. FREEMAN,
Solicitors for Defendants.

553 *Deposition of N. H. Streeter.*

In the circuit court of the United States for the southern district of Illinois.

JOHN W. KENNICOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE CO., ILLINOIS, impleaded, &c.

Deposition of Nathan H. Streeter, taken before H. E. Mann, clerk U. S. circuit court, at his office in the city of St. Paul, in said district, on Saturday, the 23d day of May, A. D. 1874, commencing at 10 o'clock a. m.

DISTRICT OF MINNESOTA, *ss:*

Nathan H. Streeter, a witness produced on the part of the plaintiffs

in the above-entitled suit, being first duly sworn therein, deposes and says: I am the owner of construction-bonds Nos. sixteen, (16,) seventeen, (17,) and twenty-seven (27) of the Mount Vernon Railroad Company, for one thousand dollars ($1,000) each, with coupons attached. I acquired the same on or about the twenty-second day of February, A. D. 1874, bona fide for a valuable consideration and in the usual course
554 of business. I herewith annex said bonds and coupons to this my deposition as a part of the same.

NATHAN H. STREETER.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the United States circuit court, do hereby certify and return that pursuant to the annexed notice on Saturday, May 23d, A. D. 1874, between the hours of ten and eleven in the forenoon of that day, at my office, in the city of Saint Paul, the above-named witness was by me first duly sworn in the above-entitled cause; that his deposition was by me reduced to writing, carefully read by me to said witness, and by him signed in attestation and approval thereof; that no one was present except said witness and myself; that the annexed bonds and coupons are the ones referred to by said witness.

In testimony whereof I have hereto set my hand and affixed the seal of said circuit court of the United States for the district of Minnesota, at St. Paul, in said district, this 23rd day of May, A. D. 1874.

[L. S.] H. E. MANN, *Clerk.*

(Indorsed:) Filed May 27th, 1874. J. A. Jones, clerk.

555 In the Supreme Court of the United States, October term, A. D. 1876, Washington, D. C.

BOARD OF SUPERVISORS OF WAYNE CO., ILLS., }
vs. }
JOHN W. KENNICOTT ET AL. }

It is hereby stipulated & agreed that the clerk of said court, in printing the record of said cause, may omit from said printed record the several bonds of the Mt. Vernon Railroad Company offered in evidence on the trial of said cause in the court below, or reported upon by the master in chancery of said court in his various reports to said court, made in said cause; the said clerk, however, publishing & printing in said record the testimony of the various holders of said bonds & also a specimen of said bonds, one of each issue as a sample or specimen of the whole of said bonds.

Dated Dec. 8, 1876.

(Signed) JAMES C. ROBINSON,
Atty. for Appellant.

(") WALTER B. SCATES,
For Defts.

(") S. A. GOODWIN,
Of Counsel for Defts.

Filed 12th Dec., 1876.

556 UNITED STATES OF AMERICA,
State of Illinois:

No. 16.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary and its corporate seal to be hereto affixed at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

MOUNT VERNON R. R. CO. JEFFERSON & WAYNE COUNTIES, ILLS.

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

in the above-entitled suit, being first duly sworn therein, deposes and says: I am the owner of construction-bonds Nos. sixteen, (16,) seventeen, (17,) and twenty-seven (27) of the Mount Vernon Railroad Company, for one thousand dollars ($1,000) each, with coupons attached. I acquired the same on or about the twenty-second day of February, A. D. 1874, bona fide for a valuable consideration and in the usual course
554 of business. I herewith annex said bonds and coupons to this my deposition as a part of the same.

NATHAN H. STREETER.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the United States circuit court, do hereby certify and return that pursuant to the annexed notice on Saturday, May 23d, A. D. 1874, between the hours of ten and eleven in the forenoon of that day, at my office, in the city of Saint Paul, the above-named witness was by me first duly sworn in the above-entitled cause; that his deposition was by me reduced to writing, carefully read by me to said witness, and by him signed in attestation and approval thereof; that no one was present except said witness and myself; that the annexed bonds and coupons are the ones referred to by said witness.

In testimony whereof I have hereto set my hand and affixed the seal of said circuit court of the United States for the district of Minnesota, at St. Paul, in said district, this 23rd day of May, A. D. 1874.

[L. S.] H. E. MANN, *Clerk.*

(Indorsed:) Filed May 27th, 1874. J. A. Jones, clerk.

555 In the Supreme Court of the United States, October term, A. D. 1876, Washington, D. C.

BOARD OF SUPERVISORS OF WAYNE CO., ILLS., }
vs. }
JOHN W. KENNICOTT ET AL. }

It is hereby stipulated & agreed that the clerk of said court, in printing the record of said cause, may omit from said printed record the several bonds of the Mt. Vernon Railroad Company offered in evidence on the trial of said cause in the court below, or reported upon by the master in chancery of said court in his various reports to said court, made in said cause; the said clerk, however, publishing & printing in said record the testimony of the various holders of said bonds & also a specimen of said bonds, one of each issue as a sample or specimen of the whole of said bonds.

Dated Dec. 8, 1876.

(Signed) JAMES C. ROBINSON,
Atty. for Appellant.
(") WALTER B. SCATES,
For Defts.
(") S. A. GOODWIN,
Of Counsel for Defts.

Filed 12th Dec., 1876.

556 UNITED STATES OF AMERICA,
State of Illinois:

No. 16.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary and its corporate seal to be hereto affixed at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

MOUNT VERNON R. R. CO. JEFFERSON & WAYNE COUNTIES, ILLS.

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT. *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT. *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

557 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

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The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT. *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT. *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

557 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 16 for one thousand dollars.

A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dol-

lars, on the 1st day of May, 1863, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 16 for one thousand dolllars. For the company.

A. M. GRANT, *Sec'y.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 16 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

[Here follow bonds Nos. 17 & 27 of same tenor and date as above, omitted in pursuance of stipulation of counsel.]

558 *Affidavit of Herman Powers.*

U. S. circuit court, southern district of Illinois, *ss.*

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, et al., complainants,

THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company.

In chancery.

I, Herman Powers, of North Chester, Massachusetts, being duly sworn,

on oath depose and say: I am the owner in good faith and for a valuable consideration, in the usual course of business, of construction-bond No. 22 for $500 of the Mount Vernon Railroad Company, and I hereby annex the same to this my deposition as a part thereof. I make this deposition to enable Hon. Walter B. Scates, of the firm of Messrs. Scates & Whitney, attorneys at law, in Chicago, Illinois, and my attorney as to all matters relating to said bond, to act for me in collecting the same or any part thereof.

HERMAN POWERS.

559 Subscribed and sworn to this 28th day of May, A. D. 1874, before me.

JOHN G. STETSON,
U. S. Commissioner, Dist. of Massachusetts.

U. S. OF A.,
Dist. of Mass.:

MAY 28TH, 1874.

I, John G. Stetson, a United States commissioner, appointed by the circuit court of the United States of America, in and for the district of Massachusetts, in the first judicial circuit, certify that Herman Powers, of North Chester, in said district of Massachusetts, appeared before me, at the office of the clerk of the circuit court of the United States for the district of Massachusetts, and gave the foregoing affidavit on the 28th day of May, A. D. 1874, and that at his request the bond named in said affidavit is hereto annexed.

Witness my hand and seal as commissioner as aforesaid, at Boston, in said district, this 28th day of May, A. D. 1874.

[L. S.] JOHN G. STETSON,
U. S. Commissioner.

(Indorsed:) Filed June 20, 1874. J. A. Jones, clerk.

560 UNITED STATES OF AMERICA,
State of Illinois:

No. 22.] THE MOUNT VERNON RAILROAD COMPANY. [$500.00.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, five hundred dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually on the first day of May and November, in each year, until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed at the said Bank of North America.

This bond is one of a series of four hundred of five hundred dollars each, and six hundred of one thousand dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois,

granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

{ MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS. } In witness whereof, the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary and its corporate seal to be hereto affixed at the office of the company in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red :) 500.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100

dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

561 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100

dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.
A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100

dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 22 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

562 United States circuit court, southern district of Illinois.

JOHN W. KENNICOTT & OTHERS, COMPLAINANTS, *agst.* THE BOARD OF SUPERVISORS OF WAYNE County, impleaded, &c.

The annexed papers contain the depositions of Darius W. Geer, Ed. H. Ammidon, Ashbel Green, Horatio N. Holden, Wed. W. Clarke, with exhibits attached, taken before me on behalf of the complainants in the above-entitled suit, taken pursuant to notice, &c.

JOHN A. OSBORN,
U. S. Commissioner, Southern Dist. of N. Y.

In the U. S. circuit court within and for the southern district of Illinois.

JOHN W. KENNICOTT ET ALS. *vs.* BOARD OF SUPERVISORS OF WAYNE COUNTY, impleaded, &c. } Civil action.

To N. L. Freeman and A. L. Knapp, solicitors for defendants:

563 You are hereby notified that on the 26th day of May, A. D. 1874, between the hours of 9 o'clock a. m. and 6 o'clock p. m. of said day, and continuing from day to day, if necessary, at the office of John A. Osborn, U. S. commissioner, 41 Chambers st., New York, and before John A. Osborn, U. S. commissioner, I shall proceed to take the depositions of I. C. Barnes, Edward H. Ammidown, Samuel J. Crooks, Ashbel Green, Horatio H. Holden, James F. Hendrickson, H. Powers, W. W. Clarke, L. F. Reed, and others, to be read in evidence in the above-entitled cause, before J. A. Jones, esq., master in chancery of said court, under a decretal order thereof, when and where you can attend and cross-examine if you choose.

SCATES & WHITNEY,
Sols. for Compts.

Received at Springfield, Illinois, this 8th day of May, A. D. 1874, copy of the annexed notice.

N. L. FREEMAN &
A. L. KNAPP,
Solicitors for Defendants.

564 *Deposition of Darius W. Geer.*

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I,

John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of an act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil ca'ses depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st., in the city of New York, in the southern district of New York,
565 in the State aforesaid, Darius W. Geer, to testify, and the truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott and others, complainants, against The Board of Supervisors of Wayne County, impleaded, &c., and the said Darius W. Geer, being about the age of fifty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Darius W. Geer, and he did thereupon depose, testify, and say as follows, viz: I reside at Englewood, New Jersey, and am engaged in the wholesale boot and shoe business, and a member of the firm of W. A. Ransom & Co., doing business at 138 & 140 Grand street, New York, and have been member of said firm
566 for 14 years. The firm of W. A. Ransom & Co., composed of Warren A. Ransom, Aaron P. Ransom, Darius W. Geer, and Robert H. Boyd, are the owners of the following bonds, to wit: Construction-bonds of the Mount Vernon Railroad Company, dated April 20th, 1859, and numbered from 304 to 313, both inclusive, such bonds being for $1,000 each. The several bonds, being ten in number, are introduced in evidence and are hereto annexed by the commissioner, marked A, B, C, D, E, F, G, H, I, K—J. A. O., U. S. C. These several bonds were acquired by our firm in 1860 in the regular course of business, being received in payment of a bill of goods in lieu of cash. The bonds were received in entire good faith, and for a good and valuable consideration. My firm is not now a party to this suit. We obtained the bonds through Charles W. Lewis, the then treasurer of the said Mount Vernon Railroad Company.

D. W. GEER.

Examination taken, reduced to writing, & by the witness subscribed & sworn to this 26th day of May, A. D. 1874, before me.

JOHN A. OSBORN,
U. S. Commissioner, South. Dist. of New York.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

567 UNITED STATES OF AMERICA,
State of Illinois;

No. 304.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, one thousand dollars, which said company

hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year until the said principal sum shall be paid, on presentation of the proper interest-warrants, hereto annexed, at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed, at the office of the company in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

{ MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS. }

Z. CASEY,
President.

NORMAN A. SMITH,
Treasurer.

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR,
Trustee.

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars,

on the 1st day of May, 1870, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 304, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

568 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interent to that day on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 304 for one thousond dollars. For the company.

A. M. GRANT, *Secy.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1860. 2.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1860, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1859. 1.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1859, it being the interest to that date on bond No. 304 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

[Here follow bonds numbered from 305 to 313, both inclusive, of same tenor and date as above, omitted in pursuance of stipulation of counsel.]

569 *Deposition of Edw'd H. Ammidon.*

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be
570 and personally appear before me, at my office at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Edward H. Ammidon, to testify and the truth to say on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott and others, complainants, agst. the Board of Supervisors of Wayne County, impleaded, &c., defts.; and the said Edward H. Ammidon being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Edward H. Ammidon, and he did thereupon depose, testify, and say as follows, viz: I reside in New York City, and a member of the firm of Ammidon, Lane & Co., merchants, doing business in the city of New York. The said firm, composed of Edward
571 H. Ammidon & J. Henry Lane, is the owner of one construction-bond of the Mount Vernon Railway Company, dated April 20th, 1859, and numbered 331. My firm became the owner of said bond in due course of business, having received the same as collateral security for money loaned. The firm is still the owner of said bond, and no part of the same has been paid. It was received in good faith in 1863, and for a valuable consideration, without any knowledge or notice of any defence to its validity. The said bond is introduced in evidence, and marked "Exhibit V, J. A. O.," and is hereto annexed by the commissioner.

EDWARD H. AMMIDOWN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 26th day of May, 1874.

JOHN A. OSBORN,
U. S. Commissioner Southern Dist. of New York.

(Indorsed:) Filed May 30, 1874. J. A. Jones, clerk.

572 UNITED STATES OF AMERICA,
State of Illinois:

No. 331.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe

Isaac Seymour, or bearer, one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest-warrants, hereto annexed, at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

{ MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS. }

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars on the 1st day of May, 1872, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at, the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

573 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 11.

The Mount Vernon Railroad company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 331 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

574 *Deposition of Ashbel Green.*

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the circuit courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the

judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at 41 Chambers st., in the city of New York, in the said southern district
575 of New York, in the State aforesaid, Ashbel Green, to testify and the truth to say, on the part and behalf of the complainants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott et als., complainants, ag'st the Board of Supervisors of Wayne County, impleaded, &c.; and the said Ashbel Green being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Ashbel Green, and he did thereupon depose, testify, and say, as follows, viz:

I reside in Bergen County, New Jersey, and practice law in the city of New York, and am member of the firm of Alexander & Green. I am counsel in this matter for Archibald McMartin and Henry M. Alexander, executors of Peter McMartin, deceased, and also for W. A. Ransom & Co., of this city. I am not personally acquainted with the facts relative to the acquisition by W.
576 A. Ransom & Co. of the bonds of the Mount Vernon Railroad Company which they hold, but I have read the deposition of Mr. Geer, and from my acquaintance with that gentleman for many years past verily believe that the statements in his deposition are true. I am informed and believe that the firm of W. A. Ransom & Co., composed of Warren A. Ransom, Aaron P. Ransom, Darius W. Geer, and Robert H. Boyd are the owners of construction-bonds of the Mount Vernon Railroad Company, dated April 20th, 1859, and numbered from 304 to 315, both inclusive, of $1,000 each; and that the said bonds were acquired by said firm in 1860 in the regular course of business and in good faith, and for good and valuable consideration. I further say that the said executors of the said Peter McMartin, deceased, are the holders of eight bonds of the Mount Vernon Railroad Co., known as construction-bonds, three of such bonds being for $1,000 each, and numbered respectively 253, 255, 275, and five of such bonds being for $500 each, and numbered respectively 96, 104, 109, 269, 270. The several bonds, being eight in number, are introduced in evidence, and are hereto annexed, marked Exhibits L, M, N, O, P, Q, R, & S, J. A. O., U. S. C. These
577 bonds were received by me as attorney of Peter McMartin about the year 1862, as collateral security for a loan of money made by McMartin to Charles Keenan, now deceased. They have ever since that time been in my possession. They were received by me as attorney for Mr. McMartin, in good faith, for good and valuable consideration, in the regular course of business, and without any knowledge or notice of any defences, either legal or equitable, to the said bonds, or any of them. The said debt has not been fully paid. It was also understood between Mr. Keenan and myself that I should hold the bonds after the payment of McMartin's debt, to receive the payment of his indebtedness to me and my partners for professional services. This indebtedness is still unpaid. Keenan was at the time of the deposit of the bonds a lumber dealer in Jersey City, New Jersey. I was also in the habit of buying and selling real estate in the city of New York, and at the time he gave me the bonds he stated to me that he had received them in the regular course of business and for valuable consideration, and—

578 UNITED STATES OF AMERICA,
State of Illinois:

No. 253.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, one thousand dollars; which said company hereby promises to pay, on presentation of this bond, to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad, and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad, its branches, and other real and personal property of said company.

In witness whereof, the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed at the office of the company in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

{ MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS. }

Z. CASEY,
President.

NORMAN A. SMITH,
Treasurer.

(Across the face in red: 1,000.)

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

579 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1865. 12.

t

The Mount Vernon Railroad Company will pay the bearer hereof, a the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 253 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

[Here follow bonds numbered 255, 275, ($1,000 each,) 96, 104, 109, 269, & 270, ($500 each,) omitted in pursuance of stipulation of counsel.]

580 that they were well secured by real estate situate in Wayne County, State of Illinois.

ASHBEL GREEN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 26th day of May, A. D. 1874, before me.

JOHN A. OSBORN,
U. S. Commissioner, Southern Dist. of New York.

(Indorsed:) Filed May 30th, A. D. 1874. J. A. Jones, Clerk.

Deposition of H. N. Holden.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 26th day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more
581 convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Horatio N. Holden to testify, and the truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein John W. Kennicott and others complainan ts, agst. The Board of Supervisors of Wayne County, impleaded, &c., defts. And the said Horatio N. Holden, being about the age of sixty-one years, and being by me first
582 cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Horatio N. Holden, and he did thereupon depose, testify, and say as follows, viz: I live in Williamsburgh, New York State; business, butcher at Washington market, New York City. I am the sole owner of one construction-bond of the Mount Vernon Railroad Company, dated April 20th, 1859, and numbered 304, of $500. I became owner of said bond in 1861; received it in the ordinary course of business in payment for a bill of meat sold in the ordinary way. I am still the owner of the bond; no part of it has been paid; received in good faith, without knowledge or notice of any defence to the validity of the bond. Said bond is introduced in evidence, and marked by the commissioner "Exhibit T, J. A. O.," and is hereto annexed, marked as aforesaid, and made part of this deposition.

H. N. HOLDEN.

Examination made, reduced to writing, and by the witness subscribed and sworn to before me this 26th day of May, A. D. 1874.

JOHN A. OSBORN,
U. S. Commissioner, Southern Dist. of New York.

(Indorsed:) Filed May 30th, A. D. 1874. J. A. Jones, clerk.

583 UNITED STATES OF AMERICA,
State of Illinois:

No. 304.] THE MOUNT VERNON RAILROAD COMPANY. [$500.00.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, five hundred dollars, which said company

hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest warrants hereto annexed at the said Bank of North America.

This bond is one of a series of four hundred, of five hundred dollars each, and six hundred of one thousand dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee of said railroad its branches and other real and personal property of said company.

In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest warrants to be signed by its secretary, and its corporate seal to be hereto affixed at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

{ MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS. }

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors, passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 500.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen and 50-100 dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1870, it beiug the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the bank of North America, in the city of New York, seventeen 50-100

dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

584 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100

dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, seventeen 50-100 dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 304 for five hundred dollars. For the company.

A. M. GRANT, *Sec'y.*

585 *Deposition of Wed. W. Clarke.*

UNITED STATES OF AMERICA,

Southern District of New York, City, County, and State of New York, ss:

Be it remembered that, on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four, I, John A. Osborn, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act

for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear, before me, at my office at 41 Chambers st. in the city of New York, in the said southern district of New York, in the State aforesaid, Wed. W. Clarke, to testify and
586 the truth to say, on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Illinois, at wherein John W. Kennicott and others, complainants, against The Board of Supervisors of Wayne County, impleaded, &c., defendant, and the said Wed. W. Clarke, being about the age of fifty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Wed. W. Clarke, and he did thereupon depose, testify, and say as follows, viz: I reside at No. 15 East 47th street, New York City. I am engaged in any business at present; I have retired from business. I have an office at No. 10 Pine street, New York City. I am the owner of five construction-bonds of the Mount Vernon Railroad Company, of $1,000 each, dated April 20, 1859, and numbered 135, 297, 298, 300, 399. I am also owner of eight construction-bonds of the Mount Vernon Railroad Company, of $500 each, dated April 20, 1859, and numbered 72, 73, 81, 82, 83, 84, 86, & 89. These several bonds are introduced in—

587 UNITED STATES OF AMERICA,
State of Illinois:

No. 135.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour, or bearer, one thousand dollars, which said company hereby promises to pay, on presentation of this bond, to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually, on the first day of May and November in each year, until the said principal sum shall be paid, on presentation of the proper interest-warrants hereto annexed, at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of the said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage, bearing even date herewith, to the said Isaac Seymour, of the city of New York, as trustee of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

In witness whereof, the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary, and its corporate seal to be hereto affixed, at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

MOUNT VERNON R. R. CO., JEFFERSON & WAYNE COUNTIES, ILLS.

Z. CASEY,
President.

NORMAN A. SMITH,
Treasurer.

(Across the face in red ink:) 1,000.

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mortgage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois; said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washington, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR,
Trustee.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at

the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Secy.*

588 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that day on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars,

on the 1st day of Nov., 1865, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov. 1862, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars,

on the 1st day of May, 1862, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

[Here follows bonds numbered 297, 298, 300, 399, ($1,000 each,) 72, 73, 81, 82, 83, 84, 86, & 89, ($500 each,) omitted in pursuance of stipulation of counsel.]

589 evidence and are hereto annexed, marked No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, J. A. O., by the commissioner. These several bonds I acquired for valuable consideration, by purchase, on or about May 19th, 1866, and in good faith, and in the usual course of business. At the time I became owner of said bonds I had no knowledge of any defence to their validity.

WED W. CLARKE.

Examination taken, reduced to writing, and by the witness subscribed this 26th day of May, A. D. 1874, before me.

JOHN A. OSBORN,
U. S. Commissioner South. Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and
590 bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts

on the 1st day of Nov., 1865, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov. 1862, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars,

on the 1st day of May, 1862, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1860. 3.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1860, it being the interest to that date on bond No. 135 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

[Here follows bonds numbered 297, 298, 300, 399, ($1,000 each,) 72, 73, 81, 82, 83, 84, 86, & 89, ($500 each,) omitted in pursuance of stipulation of counsel.]

589 evidence and are hereto annexed, marked No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, J. A. O., by the commissioner. These several bonds I acquired for valuable consideration, by purchase, on or about May 19th, 1866, and in good faith, and in the usual course of business. At the time I became owner of said bonds I had no knowledge of any defence to their validity.

WED W. CLARKE.

Examination taken, reduced to writing, and by the witness subscribed this 26th day of May, A. D. 1874, before me.

JOHN A. OSBORN,
U. S. Commissioner South. Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and
590 bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts

of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they live in the States of New York and New Jersey, at a greater distance from the southern district of Illinois (the district in which the foregoing depositions are expected to be used on the trial of the above cause) than one hundred miles. I further certify that due notification of the time and place of taking the said depositions signed by solicitors for complainants was made out and served on the adverse party, or their solicitors, and admission of service of copy of said notice by solic-
591 itors for defendants is indorsed on said notice attached to the deposition of D. W. Geer to be present at the taking of the depositions and to put interrogatories, if he or they might think fit. I further certify that, on the 26th day of May, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same with my own hand to the court, for which the same were taken; and I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.
592 In testimony whereof I have hereunto set my hand and seal this 27th day of May, in the year of our Lord one thousand eight hundred and seventy-four and of the Independence of the United States the ninety-eighth.

[SEAL.] JOHN A. OSBORN,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the second circuit.

(Indorsed:) Filed May 30, A. D. 1874. J. A. Jones, clerk.

Affidavit of A. L. Knapp & H. Crawford.

In the circuit court, June term, A. D. 1874.

UNITED STATES OF AMERICA,
Southern District of Illinois:

JNO. W. KENNECOTT ET AL.
vs.
BOARD OF SUPERVISORS OF WAYNE COUNTY, &C.

A. L. Knapp and Henry Crawford, being duly sworn, on oath say that they are of the solicitors for said defendant; that they have read the affidavit of Norman A. Smith made this day in this case, and
593 that they first heard of the matter set forth in said affidavit on the evening of Friday, June 19th, 1874, and never before had any knowledge or information of said facts; and the said A. L. Knapp

further states that he knows that N. L. Freeman, also one of the solicitors for said defendant, is wholly ignorant of the matter in said affidavit set forth; and further, that, in all their consultations with the persons representing the board of supervisors, defendants herein, they never learned from their clients that any such facts existed, and believe the same to be unknown to the board of supervisors; and further they say not.

A. L. KNAPP.
H. CRAWFORD.

Subscribed and sworn to before me this 20th June, A. D. 1874.
J. A. JONES, *Clk.*

(Indorsed:) Filed June 20, 1874. J. A. Jones, clerk.

594 UNITED STATES OF AMERICA,
State of Illinois:

No. 172.] THE MOUNT VERNON RAILROAD COMPANY. [$1,000.

The Mount Vernon Railroad Company acknowledges itself to owe Isaac Seymour or bearer one thousand dollars, which said company hereby promises to pay on presentation of this bond to the holder hereof, at the Bank of North America, in the city of New York, on the first day of May, in the year one thousand eight hundred and seventy-four, with interest thereon at the rate of seven per centum per annum, semi-annually on the first day of May and November, in each year, until the said principal sum shall be paid, on presentation of the proper interest warrants hereto annexed at the said Bank of North America.

This bond is one of a series of six hundred of one thousand dollars each, and four hundred of five hundred dollars each, of like tenor and date, not exceeding in the whole the sum of eight hundred thousand dollars, issued and to be issued for the purpose of the construction and completion of said railroad and the expenses incident thereto.

Full payment of the principal and interest of the whole issue of these bonds is secured by a mortgage bearing even date herewith to the said Isaac Seymour, of the city of New York, as trustee, of one hundred thousand acres of land in the county of Wayne, in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour, as trustee, of said railroad, its branches, and other real and personal property of said company.

{MOUNT VERNON R.R. CO., JEFFERSON & WAYNE COUNTIES, ILLS.} In witness whereof the said The Mount Vernon Railroad Company has caused this bond to be executed and attested in its behalf by its president and treasurer, and the interest-warrants to be signed by its secretary and its corporate seal to be hereto affixed, at the office of the company, in the State of Illinois, this twentieth day of April, one thousand eight hundred and fifty-nine.

Z. CASEY, *President.*

NORMAN A. SMITH, *Treasurer.*

The foregoing is one of a series of bonds authorized and issued by the Mount Vernon Railroad Company in sums of $500 and $1,000 each, bearing seven per cent. interest, amounting to $800,000, and the payment of the same and interest is secured by a first general mort-

gage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washingto n, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 22.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1871, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

595 (654) 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

gage on said railroad, 57 miles in length, and its rolling-stock, franchise, and corporate property, and by first mortgage of 100,000 acres of land in Wayne County, State of Illinois. Said mortgages are duly recorded in the counties of Wayne, Jefferson, and Washingto n, in which said road and lands are located, and both said mortgages and bonds are executed in conformity with a resolution of the board of directors passed the 1st day of March, A. D. 1859.

I. SEYMOUR, *Trustee.*

(Across the face in red:) 1,000.

1874. 30.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1874, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 29.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1873, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1873. 28.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1872, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 27.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1871, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1872. 26.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1870, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 25.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1869, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1871. 24.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1873, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1870. 23.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1872, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

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A. M. GRANT, *Sec'y.*

1869. 21.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1870, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1869. 20.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1869, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1868. 19.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1868, it being the interest to that date on bond No. 172, for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

595 (654) 1868. 18.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1868, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 17.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1867, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1867. 16.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1867, it being the interest to that day on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 15.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1866, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1866. 14.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1866, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 13.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1865, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1865. 12.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1865, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 11.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1864, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1864. 10.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1864, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 9.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1863, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1863. 8.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1863, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 7.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1862, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1862. 6.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1862, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 5.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of Nov., 1861, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

1861. 4.

The Mount Vernon Railroad Company will pay the bearer hereof, at the Bank of North America, in the city of New York, thirty-five dollars, on the 1st day of May, 1861, it being the interest to that date on bond No. 172 for one thousand dollars. For the company.

A. M. GRANT, *Sec'y.*

[Here follow bonds of the Mt. Vernon R. R. Co., from page 655 to page 1626, both inclusive.]

596 (1627) Afterwards, to wit, on the twenty-fifth day of said June, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Decree.

United States circuit court, southern district of Illinois, in chancery.

JOHN W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, and Catherine Earland, Abraham Riker, executors of Morris J. Earle, dec'd, Francis E. Parker & William B. Bacon, administrator, Eliza A. Makepeace, adm'x of Cyrus Wakefield, dec'd, J. Sargent Smith, Maria Myers, administratrix of Austin Meyers, dec'd, Thomas Upham, executor of Wm. P. Emerson, dec'd, John H. Brown, Henry V. Davis, William R. Hodges, John L. Priest, William C. Plunckett, John J. Dixwell, Joseph Smith, Arther F. Gould, Joseph Burnett, and William L. Rolston,

597 *vs.*

THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impl'd with the Mt. Vernon Railroad Company.

} In chancery.

This cause coming on to be heard upon the equity reserved, and upon the reports of John A. Jones, esq., the master of this court, to whom it was referred by the interlocutory decree in this cause, to compute and ascertain the amount due to the several complainants as bondholders in this cause, together with other matters in said interlocutory decree contained, and upon the exceptions filed to said report, and the said court having heard all the parties in interest upon the evidence taken in said cause, and the matters contained in said report, doth now order, adjudge, and decree that the said master's report be confirmed in respect to the parties hereinafter named—that is to say: this court doth order, adjudge, and decree that there is due upon the bonds and interest-coupons secured by the mortgage and trust-deed in the interlocutory

598 decree in this cause mentioned, to the respective parties-complainants, and to those who have come in and taken the benefit of said interlocutory decree under the order of this court, the following sums respectively, viz: To Maria Myers, administratrix of Austin Myers, deceased, one hundred and fifty thousand eight hundred sixty-three dollars and sixty-five cents, (150,863.65;) Francis E. Parker, William B. Bacon, and Elma A. Makepeace, administrators of Cyrus Wakefield, deceased, one hundred and nineteen thousand nine hundred and seventy dollars and sixty-two cents, (119,970.62;) John H. Brown, sixty thousand nine hundred and eighty-six dollars and sixty-six cents, (60,986.66;) Catherine Earl and Abraham Riker, executors of Morris J. Earl, deceased, twenty-one thousand eight hundred and ninety dollars, (21,890.00;) Joseph W. Ward, ninety-eight thousand six hundred and thirty-two dollars and forty-one cents, ($98,631.41;) Thomas Upham, executor of William P. Emerson, eighteen thousand two hundred and ninety-one dollars and forty cents, ($18,291.40;) John J. Dixwell, nine thousand three hundred and forty-nine dollars and twenty-two

598½ cents, (9,349.22;) J. Smith, eight thousand nine hundred and

fifty-three dollars and twenty cents, ($8,953.20;) W. R. Rolston, six thousand eight hundred and seventy-eight dollars and thirty-five cents, (6,878.35;) John W. Kennicott, six thousand nine hundred and forty dollars and sixty-five cents, ($6,940.65;) Andrew H. Ward, eight thousand and sixteen dollars and eighty-one cents, (8,016.81;) J. Burnett, four thousand six hundred and twenty-seven dollars and ten cents, ($4,627.10;) William C. Plunckett, four thousand five hundred and sixty-four dollars and eighty cents, ($4,564.80;) J. L. Priest, one thousand one hundred and fifty-six dollars and seventy-seven cents, ($1,156.77;) E. W. Stone, one thousand one hundred and fifty-six dollars and seventy-seven cents, ($1,156.77;) J. Sargent Smith, one thousand and *and* ninety-five dollars, ($1,095.00;) H. V. Davis, one thousand and ninety-five dollars, ($1,095.00;) A. F. Gould, six hundred and eighty-one dollars and twenty-six cents, ($681.26;) William P. Hodges, one hundred and eighty-five thousand six hundred and forty-four dol-
599 lars and ninety-two cents, (185,644.92;) Isaac Taylor, twenty-nine thousand six hundred and seventy-nine dollars and seven cents, ($29,679.07;) Ransom, Geer & Co., twenty-seven thousand three hundred and eighteen dollars and seventy-five cents, ($27,318.75;) Wed W. Clark, twenty-one thousand five hundred and eighty-five dollars and thirty cents, ($21,585.30;) McMartin and Alexander, administrators of Peter McMartin, deceased, twelve thousand six hundred and thirty-one dollars and seven cents, ($12,631.07;) Nathaniel H. Streeter, seven thousand one hundred and thirty dollars and seventy cents, ($7,130.70;) Ammidown, Lane & Co., two thousand three hundred and seventy-six dollars and ninety cents, ($2,376.90;) N. H. Holden, one thousand one hundred and eighty-eight dollars and forty-five cents, ($1,188.45;) Roxanna Crego, one thousand one hundred and twenty-five dollars and sixty-two cents, ($1,125.62;) Herman Powers, one thousand and ninety-five dollars, ($1,095.00;) Glenn and Sprayberry, twenty-five thousand four hundred and forty-nine dollars and five cents, ($25,449.05;) J. L. Bleakley, nine thousand three hundred and eighty dollars and ninety cents, ($9,380.90;) H. Fuller,
600 four thousand six hundred and ninety dollars and forty-five cents, ($4,690.45;) Hosea Birdsall, sixty-four thousand six hundred and ninety-seven dollars and twenty cents, ($64,697.20;) Lucius F. Reed, twenty-six thousand eight hundred and ninety-two dollars and eighty-five cents, ($26,892.85;) Clark L. Potter, seventy-six thousand eight hundred and nine dollars and twenty-five cents, ($76,809.25;) Joseph Waxelbaum, two thousand three hundred and thirteen dollars and fifty-five cents, ($2,313.55;) James O. Faircloth, twenty thousand four hundred and fifty-four dollars and twenty-seven cents, ($20,454.27;) Caleb Underhill, seven thousand and four dollars, ($7,004.00;) James S. Hendrickson, eleven thousand eight hundred and twenty-one dollars and fifteen cents, ($11,821.15;) Oliver D. Taylor, seventeen thousand five hundred and forty-two dollars and thirty-six cents, ($17,542.36;) Benjamin Wise, twelve thousand and ninety-one dollars and thirty-five cents, ($12,091.35;) James F. Hendrickson, fourteen thousand two hundred and sixty-one dollars and forty cents, ($14,261.40;) Thompson
601 E. F. Randolph, eleven thousand eight hundred and eighty-four dollars and fifty cents, ($11,884.50;) and William C. Potter, one thousand nine hundred and twenty-five dollars, ($1,925.00.) And it is further ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that all and singular the lands and premises in the said trust-deed and mortgage in the said interlocutory decree in this cause mentioned and

described, or so much thereof as may be necessary to raise the amount so due to the said respective parties, with interest from the first day of May, 1874, together with the costs of this suit unpaid and the expenses and fees of sale, be sold, for cash in hand, at public auction, seperately in parcels of not more than one hundred and sixty (160) acres each, by John A. Jones, master in chancery of this court, at the front door of the court-house in Fairfield, Wayne County, Illinois, between the hours of nine in the morning and the setting of the sun on the day named, and from day to day, on adjournment fixed thereafter, that the said
602 master give public notice, according to law, of the time and place of such sale by previously publishing the same for the space of four successive weeks in a public newspaper published in said county of Wayne; that the said master, on the sale of said mortgaged premises, execute certificates of purchase to the purchasers thereof, which certificates shall specify the lands purchased and the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lands, unless the same shall be redeemed according to the statutes of the State of Illinois; and the said master shall file a duplicate of every such certificate issued by him. The said master is directed, (on coming in and confirmation of his report of said sale,) out of the proceeds of said sale, to retain his disbursements and commissions on said sale, and that he pay in to the clerk of this court the taxable costs of the complainants in this suit for the benefit of the parties entitled thereto, and that out of the remainder of said proceeds the said master pay to each of said
603 complainants and the said parties and persons aforesaid the said amount as reported by the said master and above decreed as due to each, with the interest from the first day of May, 1874; or if said remainder shall be insufficient to pay the whole in full, such percentage of the same as the amount due shall bear to the whole sum to be distributed in proportion, and that in case said premises should sell for more than sufficient to pay the said expenses of sale, taxable costs, and principal and interest, then that said master, after making payment as aforesaid, bring such surplus money into court without delay, to abide the further order thereof; and it is further ordered, adjudged, and decreed that the said defendants and the county of Wayne, their successors, and all persons claiming under them as purchasers or grantees pendente lite since the commencement of this suit, be forever barred and foreclosed by this decree from all equity of redemption of, in, and to said mortgaged premises, and any part and parcel thereof, unless redeemed as aforesaid, and that if said premises are not redeemed as aforesaid, according to the laws of Illinois, said master execute
604 deeds therefor; and it is further ordered, adjudged, and decreed that upon the execution and delivery of the conveyances aforesaid the said purchaser or purchasers, his or their representatives or assigns, be let into possession of said mortgaged premises, and that any of the said defendants, the County of Wayne, or the Mt. Vernon Railroad Company, or purchasers pendente lite under either of them, who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, on the production of the said master's deed of conveyance of said premises, under the sale thereby and herein authorized, surrender possession thereof to such purchaser or purchasers, their representatives or assigns, or, on refusal so to do, be considered in contempt of this court; and it is further ordered that the said master make report of his proceedings in the premises with all convenient speed. The particular description and location of the lands

and premises in the said mortgage and trust-deed mentioned and by this decree ordered to be sold is as follows, to wit: The lands sit-
605 uate in the county of Wayne, in the State of Illinois, particularly described as follows, viz: The southwest quarter of northwest quarter of section one, (1,) the southeast quarter of southeast quarter of section two, (2,) the southwest quarter of northeast quarter of section eleven, (11,) east half of northeast quarter of section eleven, (11,) west half of southeast quarter of section eleven, (11,) southeast quarter of northwest quarter of section fourteen, (14,) northeast quarter of northwest quarter of section fourteen, (14,) west half of northeast quarter of section fourteen, (14,) southeast quarter of southeast quarter of section twenty-six, (26,) west half of southwest quarter of section twenty-six, (26,) southeast quarter of southwest quarter and northeast quarter of southwest quarter of section twenty-six, (26,) northwest quarter of northwest quarter of section thirty-five, (35,) northwest quarter of northeast quarter of section thirty-five, (35,) all in town. one (1) north, range five (5) east; southwest quarter of northwest quarter and southwest quarter of section thirty-six, (36,) south half of southwest quarter, section thirty-six, (36,) town. two (2) north, range five (5) east; east half lot
606 one, (1,) northeast quarter, section six, (6,) southeast quarter of southeast quarter of section thirteen, (13,) southeast quarter northwest quarter of section twenty-four, (24,) south half northeast quarter of section twenty-four, (24,) west half of northeast quarter of section twenty-five, (25,) east half of northwest quarter of section thirty-five, (35,) all town. one (1) north, range six (6) east; southeast quarter of southeast quarter of section nineteen, (19,) town. two (2) north, range six (6) east; east half of southeast quarter, section (1,) southwest quarter of southeast quarter of section one, (1,) northwest quarter of northeast quarter of section twelve, (12,) east half of northeast quarter, section twelve, (12,) northwest fl. quarter of f. section one hundred and nineteen, (119,) southeast quarter northwest quarter of section twenty-one, (21,) all town. one (1) north, range seven (7) east; southwest quarter, northeast quarter of section twenty-one, (21,) west half southeast quarter of section twenty-one, (21,) southwest quarter southwest quarter, section twenty-seven, (27,) east half northeast quarter of section twenty-eight, (28,) southwest quarter northeast quarter of section twenty-eight, (28,) southwest quarter northeast quarter of section
607 thirty-five, (35,) southeast quarter northeast quarter of section thirty-six, (36,) all town. one (1) north, range seven (7) east; southeast quarter southwest quarter of section twenty-one, (21,) north half southeast quarter of section twenty-two, (22,) west half southeast quarter of section twenty-three, (23,) east half southeast quarter of section twenty-three, (23,) southeast quarter southwest quarter of section twenty-three, (23,) northwest quarter southwest quarter of section twenty-three, (23,) southwest quarter northwest quarter of section twenty-four, (24,) west half southwest quarter of section twenty-four, (24,) southeast quarter southwest quarter of section twenty-four, (24,) southwest quarter northwest quarter of section twenty- , (25,) southwest quarter southeast quarter of section twenty-five, (25,) northwest quarter southwest quarter of section twenty-five, (25,) northeast quarter northeast quarter of section twenty-six, (26,) northeast quarter southeast quarter of section twenty-six, (26,) west half northeast quarter of section thirty-six, (36,) southeast quarter northeast quarter of section thirty-six, (36,) northeast quarter southeast quarter of section thirty-six, (36,) all town. two (2) north, range seven (7) east; southeast
608 southeast quarter of section five, (5,) lot one (1) northwest quar-

ter of section six, (6,) northeast quarter southwest quarter of section six, (6,) lot two, (2,) northwest quarter of section seven, (7,) all town. one (1) north, range eight (8) east; southwest quarter northeast quarter of section seven, (7,) southeast quarter southwest quarter of section eight, (8,) southwest quarter southwest quarter of section eight, (8,) southwest quarter of section twenty-two, (22,) southeast quarter southeast quarter of section twenty-six, (26,) southwest quarter southwest quarter of section twenty-six, (26,) northwest quarter northwest quarter section twenty-seven, (27,) northeast quarter northwest quarter of section twenty-eight, (28,) east half northeast quarter of section twenty-eight, (28,) all of section thirty-four, (34,) west half northwest quarter of section thirty-five, (35,) southeast quarter northwest quarter of section thirty-five, (35,) southwest quarter northeast quarter of section thirty-five, (35,) east half northeast quarter of section thirty-five, (35,) west half southeast quarter of section thirty-five, (35,) southwest
609 quarter of section thirty-five, (35,) northwest quarter northwest quarter of section thirty-six, (36,) all town. one (1) north, range eight (8) east; northwest quarter of section thirty-one, (31,) northwest quarter northeast quarter and south half northeast quarter section thirty-one, (31,) east half southeast quarter section thirty-one, (31,) all town. two (2) north, range eight (8) east; all of section one, (1,) north half northwest quarter southeast quarter northwest quarter of section thirty-one, (31,) west half northeast quarter of section two, (2,) west half of section two, (2,) west half southeast quarter of section two, (2,) southeast quarter southeast quarter of section two, (2,) all of section three, (3,) south half northeast quarter and south half northwest quarter of section two, (2,) east half southeast quarter northeast quarter southeast quarter of section four, (4,) southwest quarter southeast quarter of section four, (4,) all town. one (1) north, range nine (9) east; east half southwest southeast quarter of section four, (4,) east half northeast quarter of section four, (4,) east half northeast quarter of section seven, (7,) northeast quarter northwest quarter of section seven, (7,) east half southwest quarter of section seven, (7,) east half southeast quarter
610 north half southeast quarter of section seven, (7,) southwest quarter southeast quarter southeast quarter of section seven, (7,) northwest quarter of southeast quarter of section seven, (7,) all of section ten, (10,) all of section eleven, (11,) all of section twelve, (12,) all of section thirteen, (13,) all of section fourteen, (14,) east half northeast quarter of section fifteen, (15,) northwest quarter northeast quarter of section fifteen, (15,) north half northwest quarter of section fifteen, (15,) south half northeast quarter of section twenty-two, (22,) east half of section twenty-three, (23,) east half northwest quarter of section twenty-three, (23,) northwest quarter northwest quarter of section twenty-three, (23,) northeast quarter southwest quarter and northeast quarter southeast quarter of section twenty-three, (23,) southeast quarter southwest quarter of section twenty-three, (23,) east half of section twenty-four, (24,) west half of section twenty-four, (24,) all of section twenty-five, (25,) northeast quarter of section twenty-six, (26,) southeast quarter of section twenty-six, (26,) southeast quarter northwest quarter of
611 section twenty-six, (26,) all town. one (1) north, range nine (9) east; southwest quarter southwest quarter of section twenty-six, (26,) northeast quarter southwest quarter of section twenty-six, (26,) southeast quarter southwest quarter of section twenty-six, (26,) northeast quarter northeast quarter of section thirty-four, (34,) southeast quarter southwest quarter of section thirty-four, (34,) southwest quarter southeast quarter of section thirty-four, (34,) east half southeast

quarter of section thirty-four, (34,) all of section thirty-five, (35,) all of section thirty-six, (36,) all town. one (1) north, range nine (9) east; east halfand southwest quarter of section nineteen, (19,) east half northwest quarter of section nineteen, (19,) northwest quarter northwest quarter of section nineteen, (19,) east half southwest quarter of section nineteen, (19,) west half northwest quarter of section twenty, (20,) south half of section twenty, (20,) south half southwest quarter of section twenty-one, (21,) east half northeast quarter of section (23,) east half southeast quarter of section (23,) southwest quarter southeast quarter of section twenty-three, (23,) northeast quarter of section twenty-four, (24,)
612 west half of section twenty-four, (24,) west half of section twenty-five, (25,) west half southeast quarter of section twenty-five, (25,) southeast quarter southeast quarter of section twenty-five, (25,) northeast quarter southeast quarter of section twenty-five, (25,) northeast quarter of section twenty-six, (26,) east half northwest quarter and northwest quarter northeast quarter of section twenty-six, (26,) southeast quarter northeast quarter of section twenty-eight, (28,) all town. two (2) north, range nine (9) east; west half of section twenty-eight, (28,) southeast quarter of section twenty-eight, (28,) west half northeast quarter of section twenty-nine, (29,) northwest quarter of section twenty-nine, (29,) northeast quarter southeast quarter of section twenty-nine, (29,) south half southeast quarter of section twenty-nine, (29,) northwest quarter southwest quarter of section twenty-nine, (29,) east half northeast quarter of section thirty, (30,) northwest quarter northeast quarter of section thirty, (30,) northeast quarter southeast quarter of section thirty, (30,) east half northwest quarter of section thirty, (30,)
613 north half southwest quarter of section thirty, (30,) southwest quarter southeast quarter of section thirty, (30,) northwest quarter northwest quarter of section thirty-one, (31,) east half northeast quarter of section thirty-two, (32,) northwest quarter northeast quarter of section thirty-two, (32,) east half of section thirty-three, (33,) northwest quarter of section thirty-three, (33,) northeast quarter southwest quarter of section thirty-three, (33,) north half of section thirty-four, (34,) northeast quarter southeast quarter of section thirty-four, (34,) west half southeast quarter of section thirty-four, (34,) southwest quarter of section thirty-four, (34,) west half southwest quarter of section thirty-five, (35,) southeast quarter southwest quarter of section thirty-five, (35,) all of section thirty-six, (36,) all town. two (2) north, range nine (9) east; northeast quarter of section three, (3,) southeast quarter northwest quarter of section three, (3,) southwest quarter of section three, (3,) west half northeast quarter of section four, (4,) southeast quarter
614 northeast quarter of section four, (4,) northwest quarter of section four, (4,) north half southwest quarter of section four, (4,) southeast quarter of section four, (4,) south half southwest quarter of section four, (4,) southeast quarter of section five, (5,) west half southwest quarter of section five, (5,) southeast quarter of southwest quarter of section five, (5,) north half northwest quarter of section eight, (8,) north half northeast quarter of section eight, (8,) southwest quarter northeast quarter of section eight, (8,) northeast quarter southeast quarter of section eight, (8,) west half northeast quarter of section nine, (9,) northwest quarter of section nine, (9,) northeast quarter southwest quarter of section nine, (9,) east half northeast quarter of section nine, (9,) northwest quarter southwest quarter of section nine, (9,) southeast quarter of section nine, (9,) southwest quarter southeast quarter and southwest quarter northeast quarter of section ten, (10,) west half southeast quarter of section ten, (10,) west half northeast quarter of section fifteen, (15,) west half of sec-

tion fifteen, (15,) southeast quarter of section fifteen, (15,) all town.
615 one (1) south range five (5) east; northeast quarter southwest quarter of section twenty-two, (22,) north half of section twenty-two, (22,) east half southeast quarter of section twenty-two, (22,) northwest quarter southeast quarter of section twenty-two, (22,) southwest quarter northwest quarter of section twenty-three, (23,) southwest quarter southwest quarter of section twenty-three, (23,) east half southeast quarter of section twenty-five, (25,) west half southwest quarter of section twenty-five, (25,) northwest quarter southeast quarter of section twenty-five, (25,) southwest quarter of northwest quarter and east half northwest quarter of section twenty-six, (26,) northwest quarter northwest quarter of section twenty-six, (26,) east half southwest quarter of section twenty-six, (26,) southeast quarter of section twenty-six, (26,) west half southwest quarter of section thirty-one, (31,) southeast quarter southwest quarter of section thirty-one, (31,) east half northeast quarter of section thirty-five, (35,) northwest quarter northeast quarter of section thirty-five, (35,) southeast
616 quarter of section thirty-five, (35,) northeast quarter southwest quarter of section thirty-five, (35,) west half northwest quarter of section thirty-five, (35,) northwest quarter northwest quarter of section thirty-six, (36,) west half southwest quarter of section thirty-six, (36,) northeast quarter northeast quarter of section thirty-six, (36,) all town. one (1) south, range five (5) east, west half northwest quarter of section one, (1,) east half of section two, (2,) east half northwest quarter of section two, (2,) all town two (2) south range five (5) east, northeast quarter of section five, (5,) southwest quarter northwest quarter of section six, (6,) east half southwest quarter of section six, (6,) southwest quarter northwest quarter of section ten, (10,) northeast quarter of section ten, (10,) northwest quarter southeast quarter of section ten, (10,) southwest quarter southeast quarter of section ten, (10,) east half southeast quarter of section ten, (10,) north half of section eleven, (11,) west half southwest quarter of section eleven, (11,) southwest quarter
617 southeast quarter of section eleven, (11,) east half southeast quarter of section eleven, (11,) east half of section twelve, (12,) east half northwest quarter of section twelve, (12,) southwest quarter northwest quarter of section twelve, (12,) southwest quarter of section twelve, (12,) northwest quarter northeast quarter of section thirteen, (13,) north half northwest quarter of section thirteen, (13,) northeast quarter of section fourteen, (14,) east half northwest quarter of section fourteen, (14,) northwest quarter northwest quarter of section fourteen, (14,) northwest quarter northeast quarter of section twenty-five, (25,) northwest quarter of section twenty five, (25,) northeast quarter southwest quarter of section twenty-five, (25,) southwest quarter southeast quarter of section twenty-five, (25,) west half southwest quarter of section twenty-five, (25,) all town. two (2) south range five (5) east, southeast quarter southwest quarter of section twenty-five, (25,) southwest quarter northwest quarter of section twenty-eight, (28,) south half of section twenty-eight, (28,) east half southeast quarter of section
618 twenty-nine, (29,) all town. two (2) south range five (5) east, west half southwest quarter of section one, (1,) south half northwest quarter of section one, (1,) northwest quarter northwest quarter of section one, (1,) east half southwest quarter of section one, (1,) northwest quarter northeast quarter of section two, (2,) south half northeast quarter of section two, (2,) south half and northwest quarter of section two, (2,) east half southwest quarter of section five, (5,) northwest quarter southeast quarter of section five, (5,) southeast

quarter northwest quarter of section five, (5,) northeast quarter southeast quarter of section six, (6,) south half northeast quarter of section seven, (7,) south half northwest quarter of section seven, (7,) northwest quarter southwest quarter of section seven, (7,) southeast quarter of section seven, (7,) southeast quarter northeast quarter of section eight, (8,) southwest quarter northwest quarter of section eight, (8,) southeast quarter northwest quarter of section eight, (8,) southwest quarter
619 of section eight, (8,) southeast quarter of section eight, (8,) southeast quarter northeast quarter of section ten, (10,) southeast quarter of section ten, (10,) all of section eleven, (11,) northeast quarter northwest quarter of section twelve, (12,) all town. two (2) south range six (6) east, southeast northwest quarter section twelve, southeast northeast quarter of section twelve, west half northwest quarter of section twelve, (12,) southwest quarter of section twelve, (12,) east half southeast quarter of section twelve, (12,) west half southeast quarter of section twelve, (12,) north half northeast quarter of section thirteen, (13,) southwest quarter northeast quarter of section thirteen, (13,) west half of section thirteen, (13,) southeast quarter of section thirteen, all of section fourteen, (14,) east half of section fifteen, (15,) southwest quarter of section fifteen, (15,) south half northwest quarter of section fifteen, (15,) all of section seventeen, (17,) northwest quarter northeast quarter of section eighteen, (18,) south
620 half northeast quarter of section nineteen, (19,) east half northwest quarter of section nineteen, (19,) southeast quarter southwest quarter of section nineteen, (19,) southeast quarter of section nineteen, (19,) all of section twenty, (20,) east half of section twenty-one, (21,) west half northwest quarter of section twenty-one, (21,) northeast quarter northwest quarter of section twenty-one, (21,) southeast quarter southwest quarter of section twenty-one, (21,) north half of section twenty-two, (22,) northeast quarter southwest quarter of section twenty-two, (22,) west half southwest quarter of section twenty-two, (22,) all town two (2) south range six (6) east, east half southeast quarter of section twenty-two, (22,) all of section twenty-three, (23,) all of section twenty-four, (24,) all of section twenty-five, (25,) east half northeast quarter of section twenty-six, (26,) northwest quarter northeast quarter of section twenty-six, (26,) east half southeast quarter of section twenty-six, (26,) southwest quarter southeast quarter of section twenty-six, (26,) east half
621 northwest quarter of section twenty-six, (26,) southwest quarter of northwest quarter of section twenty-six, (26,) southwest quarter of section twenty-six, (26,) northeast quarter of section twenty-seven, (27,) east half southeast quarter of section twenty-seven, (27,) southwest quarter southeast quarter of section twenty-seven, (27,) west half northwest quarter of section twenty-seven, (27,) all of section twenty-eight, (28,) all of section twenty-nine, (29,) southwest quarter of southwest quarter of section thirty, (30,) east half northeast quarter of section thirty, (30,) east half southeast quarter of section thirty, (30,) northeast quarter of section thirty-one, (31,) south half of section thirty-one, (31,) northwest quarter of section thirty-one, (31,) northeast quarter of section thirty-two, (32,) southeast quarter northwest quarter of section thirty-two, (32,) northwest quarter southwest quarter of section thirty-two, (32,) northeast quarter northwest quarter of section thirty-two, (32,) west half northwest quarter of section thirty-two, (32,) all town
622 two south, range six (6) east; half of section thirty-three, (33,) northwest quarter of section thirty-three, (33,) east half southwest quarter of section thirty-three, (33,) northwest quarter southwest quarter

of section thirty-three, (33,) southwest quarter southwest quarter of section thirty-three, (33,) all of section thirty-four, (34,) all of section thirty-five, (35,) all of section thirty-six, (36,) all town two south, range six east; all of section one, (1,) all of section two, (2,) east half northwest quarter of section three, (3,) east half southwest quarter of section three, (3,) northwest quarter southwest quarter of section three, (3,) northeast quarter southeast quarter & west half southeast quarter of section four, (4,) east half northwest quarter of section four, (4,) east half southeast quarter of section six, (6,) northeast quarter of section six, (6,) west half southeast quarter of section six, (6,) southeast quarter of section seven, (7,) north half southwest quarter of section seven, (7,) southeast quarter southwest quarter of section seven, (7,) northeast
623 quarter of section ten, (10,) southeast quarter northwest quarter of section ten, (10,) east half southeast quarter of section ten, (10,) northwest quarter southeast quarter of section ten, (10,) west half northwest quarter of section eleven, (11,) northwest quarter southeast quarter of section eleven, (11,) all town three (3) south, range six (6) east; north half of section twelve, (12,) north half southwest quarter of section twelve, (12,) southeast quarter southwest quarter of section twelve, (12,) north half southeast quarter of section twelve, (12,) southwest quarter southeast quarter of section twelve, (12,) northeast quarter northwest quarter of section fourteen, (14,) west half northwest quarter of section fourteen, (14,) northeast quarter of section eighteen, (18,) east half northwest quarter of section eighteen, (18,) northwest quarter southeast quarter of section eighteen, (18,) east half southwest quarter of section eighteen, (18,) all town three south, range six (6) east;
624 west half northeast quarter of section two, (2,) west half of section two, (2,) west half southeast quarter of section two, (2,) southeast quarter southeast quarter of section two, (2,) all of section three, (3,) all of section four, (4,) all of section five, (5,) all of section six, (6,) all of section seven, (7,) all of section eight, (8,) all of section nine, (9,) all of section ten, (10,) all of section eleven, (11,) southwest quarter northwest quarter of section twelve, (12,) south half of section twelve, (12,) all of section thirteen, (13,) all of section fourteen, (14,) all town three (3) south, range seven (7) east; all of section fifteen, (15,) all of section seventeen, (17,) east half of section eighteen, (18,) east half northwest quarter of section eighteen, (18,) all town three (3) south, range seven (7) east; southwest quarter southwest quarter of section one, (1,) southeast quarter southwest quarter of section one, (1,) west half northeast quarter of section two, (2,) northwest quarter of section two, (2,) south half of section two, (2,) north half of section three, (3,) northeast quarter southeast quarter of section three, (3,) northeast
625 quarter southwest quarter of section four, (4,) north half of section four, (4,) north half of section five, (5,) west half southwest quarter of section five, (5,) northwest quarter southeast quarter of section five, (5,) northeast quarter of northwest quarter of section seven, (7,) north half northeast quarter of section seven, (7,) northeast quarter northwest quarter of section eight, (8,) west half northwest quarter of section eight, (8,) east half of section eleven, (11,) all of section twelve, (12,) northeast quarter of section thirteen, (13,) south half southwest quarter of section thirteen, (13,) east half southeast quarter of section thirteen, (13,) southwest quarter southeast quarter of section thirteen, (13,) northwest quarter southwest quarter of section thirteen, (13,) northwest quarter southeast quarter of section thirteen, (13,) all town one (1) south, range eight (8) east; northwest quarter northwest quarter of section twenty-three, (23,) northeast quar-

ter southwest quarter of section twenty-four, (24,) northwest quarter of section twenty-four, (24,) all town one (1) south, range eight
626 (8) east; east half northwest quarter of section six, (6,) southwest quarter northwest quarter of section six, (6,) west half southwest quarter of section six, (6,) southeast quarter northwest quarter of section seven, (7,) west half northwest quarter of section seven, (7,) northeast quarter southwest quarter of section seven, (7,) west half southwest quarter of section seven. (7,) west half southeast quarter of section seven, (7,) southeast quarter southwest quarter of section eight, (8,) southwest quarter southwest quarter of section eight,(8,) northeast quarter northwest quarter of section seventeen, (17,) west half northwest quarter of section seventeen, (17,) west half southwest quarter of section seventeen, (17,) all town three south, range eight (8) east; southwest quarter of section one, (1,) west half southeast quarter of section one, (1,) southeast quarter southeast quarter of section one, (1,) south half of section two, (2,) southeast quarter of section three, (3,) southeast quarter southwest
627 quarter of section three, (3,) west half southeast quarter of section six, (6,) southeast quarter northeast quarter of section seven, (7,) west half northeast quarter of section seven, (7,) west half of section seven, (7,) southeast quarter of section seven, (7,) west half northwest quarter of section eight, (8,) all town one (1) south, range nine (9) east; east half of section ten, (10,) east half southwest quarter of section ten, (10,) northeast quarter northwest quarter of section ten, (10,) all of section eleven, (11,) north half of *of* section twelve (12,) north half southwest quarter of section twelve, (12,) northwest quarter southeast quarter of section twelve, (12,) southwest quarter southwest quarter of section thirteen, (13,) east half southwest quarter of section thirteen, (13,) southwest quarter southeast quarter of section thirteen, (13,) all of section fourteen, (14,) east half southeast quarter of section fifteen, (15,) southwest quarter southeast quarter of section fifteen, (15,) west half northwest quarter of section seventeen, (17,) south half of section seventeen, (17,) all of section eighteen, (18,) north half
628 of section nineteen, (19,) southeast quarter of section nineteen, (19,) all of section twenty, (20,) west half northeast quarter of section twenty-one, (21,) southeast quarter northeast quarter of section twenty-one, (21,) west half of section twenty-one, (21,) southeast quarter of section twenty-one, (21,) east half of section twenty-two, (22,) south half northwest quarter of section twenty-two, (22,) southwest quarter of section twenty-two, (22,) northeast quarter of section twenty-three, (23,) west half of section twenty-three, (23,) all town. one (1) south, range nine (9) east; east half southeast quarter of section twenty-three, (23,) southwest quarter southeast quarter of section twenty-three, (23,) west half northeast quarter of section twenty-four, (24,) west half of section twenty-four, (24,) west half southeast quarter of section twenty-four, (24,) northwest quarter southeast quarter of section twenty-five, (25,) northwest quarter of section twenty-five, (25,) north half southwest quarter of section twenty-five, (25,) west half northeast quarter
629 of section twenty-five, (25,) all of section twenty-six, (26,) all of section twenty-seven, (27,) all of section twenty-eight, (28,) west half northeast quarter of section twenty-nine, (29,) southeast quarter northeast quarter of section twenty-nine, (29,) west half of section twenty-nine, (29,) southeast quarter of section twenty-nine, (29,) northeast quarter northeast quarter of section thirty, (30,) northwest quarter northeast quarter of section thirty, (30,) all of section thirty-two, (32,) north half of section thirty-three, (33,) west half southwest quarter of section thirty-three, (33,) northwest quar-

ter southeast quarter of section thirty-three, (33,) northeast quarter of section thirty-four, (34,) northeast quarter northwest quarter of section thirty-four, (34,) west half northwest quarter of section thirty-four, (34,) east half southeast quarter of section thirty-four, (34,) west half northwest quarter of section thirty-five, (35,) northwest quarter southwest quarter of section thirty-five, (35,) all town one (1) south, range
603 nine (9) east; east half southwest quarter of section thirty-five, (35,) southeast quarter of section thirty-five, (35,) south half of section thirty-six, (36,) southwest quarter northeast quarter of section thirty-six, (36,) southeast quarter northeast quarter of section thirty-six, (36,) all town one (1) south, range nine (9) east; west half northeast quarter of section one, (1,) northeast quarter northeast quarter of section one, (1,) northwest quarter of section one, (1,) all of section two, (2,) northwest quarter of section three, (3,) east half northeast quarter of section three, (3,) southeast quarter southwest quarter of section three, (3,) southwest quarter southeast quarter of section three, (3,) east half southeast quarter of section three, (3,) east half northeast quarter of section four, (4,) southwest quarter northeast quarter of section four, (4,) west half of section four, (4,) west half southeast quarter of section four, (4,) northeast quarter southeast quarter of section four, (4,) east half of section five, (5,) southwest quarter southwest quar-
631 ter of section eight, (8,) west half northwest quarter of section nine, (9,) east half northeast quarter of section ten, (10,) southwest quarter northeast quarter of section ten, (10,) northwest quarter of section ten, (10,) east half southwest quarter of section ten, (10,) southeast quarter of section ten, (10,) northeast quarter of section ten, (10,) all town two (2) south, range nine (9) east; west half of section eleven, (11,) west half northwest quarter of section twelve, (12,) northeast quarter northwest quarter of section twelve, (12,) west half southwest quarter of section twelve, (12,) southeast quarter northwest quarter of section twelve, (12,) northeast quarter northwest quarter of section thirteen, (13,) northwest quarter northwest quarter of section thirteen, (13,) northeast quarter northeast quarter of section fourteen, (14,) northwest quarter northeast quarter of section fourteen, (14,) north half northwest quarter of section fourteen, (14,) northeast quarter of section fifteen, (15,) west half of section fifteen, (15,) west half
632 northeast quarter of section seventeen, (17,) northeast quarter northwest quarter of section seventeen, (17,) southeast quarter southeast quarter of section seventeen, (17,) east half northeast quarter of section twenty, (20,) east half southeast quarter of section twenty, (20,) northeast quarter of section twenty-one, (21,) west half of section twenty-one, (21,) northeast quarter northwest quarter of section twenty-two, (22,) west half northwest quarter of section twenty-two, (22,) southeast quarter southwest quarter of section twenty-six, (26,) west half southwest quarter of section twenty-seven, (27,) southeast quarter southwest quarter of section twenty-seven, (27,) south half northeast quarter of section twenty-eight, (28,) west half of section twenty-eight, (28,) southeast quarter of section twenty-eight, (28,) east half of section twenty-nine, (29,) all of town two (2) south, range nine (9) east; east half southwest quarter of section twenty-nine, (29,) southwest quarter southwest quarter of section twenty-nine, (29,) southeast quarter southwest quarter of section thirty, (30,) west half southwest quar-
633 ter of section thirty, (30,) southwest quarter northwest quarter of section thirty, (30,) south half southeast quarter of section thirty, (30,) north half northwest quarter of section thirty-one, (31,) southeast quarter northeast quarter of section thirty-one, (31,) east half of section thirty-two, (32,) southwest quarter northwest quarter of section thirty-

two, (32,) north half southwest quarter of section thirty-two, (32,) southeast quarter southwest quarter of section thirty-two, (32,) all of section thirty-three, (33,) all of section thirty-four, (34,) west half southwest quarter of section thirty-five, (35,) southeast quarter southwest quarter of section thirty-five, (35,) northeast quarter northwest quarter of section thirty-five, (35,) west half northwest quarter of section thirty-five, (35,) southwest quarter northeast quarter of section thirty-six, (36,) east half southeast quarter of section thirty-six, (36,) all town two (2) south, range nine (9) east; east half northeast quarter of section one, (1,) southwest quarter northeast quarter of section one, (1,) south half
634 southwest quarter of section one, (1,) southeast quarter of section one, (1,) west half northeast quarter of section two, (2,) west half of section two, (2,) southeast quarter of section two, (2,) northeast quarter of section three, (3,) all town three (3) south, range nine (9) east; west half of section three, (3,) south half southeast quarter of section three, (3,) east half of section four, (4,) east half northwest quarter of section four, (4,) southeast quarter southwest quarter of section four, (4,) northeast quarter northeast quarter of section five, (5,) east half southwest quarter of section seven, (7,) southwest quarter southeast quarter of section seven, (7,) northeast quarter southwest quarter of section eight, (8,) southwest quarter southwest quarter of section eight, (8,) east half southwest quarter of section nine, (9,) east half of section nine, (9,) east half northwest quarter of section nine, (9,) all of section ten, (10,) east half of section eleven, (11,) northwest quarter of section eleven, (11,) west half southwest quarter of section eleven, (11,) all of section twelve, (12,) all of section thirteen, (13,) south half northeast
635 quarter of section fourteen, (14,) west half northwest quarter of section fourteen, (14,) southeast quarter northwest quarter of section fourteen, (14,) south half of section fourteen, (14,) all of section fifteen, (15,) northwest quarter northwest quarter of section seventeen, (17,) north half northeast quarter of section eighteen, (18,) all town three (3) south, range nine (9) east.

And thereupon afterwards, to wit, on the 22d day of August of the year last aforesaid, the defendant filed in the clerk's office of said circuit court its appeal-bond herein; which said bond is in words and figurs following, to wit:

Bond.

Supreme Court of the United States.

JNO. W. KENNICOTT, JOSEPH W. WARD, Andrew H. Ward, Ebenezer W. Stone, Catherine Earl, and Abraham Riker, executors of Morris I. Earl, deceased, Francis E. Parker and William B. Bacon, administrators, and Eliza A. Wakefield, administratrix, of Cyrus Wakefield, deceased, J. Sargent Smith,
636 Thomas Upham, Maria Myers, administratrix of Austin Myers, deceased, Thomas Upham, executor of Jno. W. Emerson, deceased, Jno. H. Brown, Henry V. Davis, William R. Hodges, Jno. L. Priest, William C. Plunkett, Jno. I. Dixwell, Joseph Smith, Arthur F. Gould, Joseph Burnett, and William L. Rolston,
v.
THE BOARD OF SUPERVISORS OF WAYNE County, Illinois, impleaded with the Mount Vernon Railroad Company. } Chancery.

Know all men by these presents that we, the Board of Supervisors of Wayne County, Daniel L. McCauly, William Shaeffer, Oliver Homes, Jno. L. Handley, et al., are held and firmly bound unto the said complainants, Jno. W. Kennicott, Joseph W. Ward, and others, in the sum of forty thousand dollars, to be paid to the said complainants, Jno. W. Kennicott, Joseph W. Ward, and others, their heirs or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 18th day of August, A. D. 1874.

Whereas the above-named Board of Supervisors of Wayne
637 County, Illinois, impleaded with the Mount Vernon Railroad Company, have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois on the twenty-fifth day of June, A. D. 1874:

Now, therefore, the condition of this obligation is such, that if the above-name' Board of Supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Company, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

The Board of Supervisors of Wayne Co., Ills.,
[SEAL.] By JOSEPH B. SCUDMORE,
Chairman Board of Supervisors, Wayne County, Illinois.

Attest:
[SEAL.] JNO. MORRIS,
County Clerk, Wayne County, Illinois.

T. L. Cooper.	[s.]	Daniel L. McCauley.	[seal.]
Geo. W. Pitcher.	[seal.]	Wm. Shaffer.	[seal.]
Caleb Creus.	[seal.]	Oliver Holmes.	[seal.]
638 Fred. Beston.	[seal.]	Jno. L. Handley.	[seal.]

Jno. Hawery. [seal.]
C. W. Summers. [seal.]
Jacob Hall. [seal.]
John D. Simpson. [seal.]
T. W. Dickey. [seal.]

B. F. Harris. [seal.]
Jno. Walton. [seal.]
A. G. Borah. [seal.]
I. C. Staton. [seal.]
Jno. W. Cissna. [seal.]

H. M. Twadell. [seal.]
Geo. F. Laurence. [seal.]
Wm. W. Grant. [seal.]
James B. Manahan. [seal.]
M. M. Wheeler. [seal.]
H. B. Johnson. [seal.]
Wm. Pasco. [seal.]
Jacob Martin. [seal.]
Wm. R. Barr. [seal.]
Wm. H. Stephens. [seal.]
George G. Feather. [seal.]
E. I. Miller. [seal.]
James Y. McRill. [seal.]
C. M. Willison. [seal.]
R. P. Hanna. [seal.]
W. C. Thomerly. [seal.]
639 Thomas J. Butler. [seal.]
James M. Butler. [seal.]
his
Daniel + Talkington. [seal.]
mark.
D. K. Felix. [seal.]
Wm. J. Vaughan. [seal.]
Marion Y. Berry. [seal.]
C. Walter. [seal.]
M. R. Whitson. [seal.]

Jno. A. Moffitt. [seal.]
Jno. Keen, jr. [seal.]
O. V. Patterson. [seal.]
M. Tankhause. [seal.]
C. C. Boggs. [seal.]
Wm. M. George. [seal.]
I. J. George. [seal.]
Jas. McCartney. [seal.]
Jo. G. Creus. [seal.]
D. C. Groves. [seal.]
Francis Kelly. [seal.]
D. W. Barkley. [seal.]
T. A. Martin. [seal.]
N. E. Roberts. [seal.]
O. W. Haney. [seal.]
T. J. Mayes. [seal.]
N. F. Forth. [seal.]
Jno. J. Tanner. [seal.]
Joe V. Baugh. [seal.]
N. N. Borah. [seal.]
Edward Barhan. [seal.]
William Hollaway. [seal.]
L. J. Rider. [seal.]
A. B. Rider. [seal.]
E. W. Mabry. [seal.]
John R. Carter. [seal.]
La Fayette Butler. [seal.]
his
Max. + Renfron. [seal.]
mark.
Stephen Fils. [seal.]
his
M. B. + Kinerly. [seal.]
mark.
J. E. Kinnerly. [seal.]
John D. Felix. [seal.]
his
Samuel + Berry. [seal.]
mark.
A. W. Womack. [seal.]
J. M. Hanes. [seal.]
Henderson Glidewell. [seal.]
Aaron B. Mills. [seal.]

STATE OF ILLINOIS,
Wayne County, ss:

I, John Morris, clerk of the county court in and for said county, do hereby certify that the signatures to the foregoing bond are genuine, and that the parties are well known to me as being far more than ample security for said bond.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fairfield, this 21st day of August, A. D. 1874.

JOHN MORRIS,
County Clerk.

Approved this 21st day of August, 1874.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed August 22, 1874. J. A. Jones, clerk.

640 *Certificate.*

Circuit court of the United States, southern district of Illinois, *ss.*

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing sixteen hundred and seventy-one pages contain a true and complete copy of all the papers filed and proceedings therein had in a certain cause wherein John W. Kennicott, Joseph W. Ward, Andrew H. Ward, and others are complainants, and the Board of Supervisors of Wayne County, Illinois, impleaded with the Mount Vernon Railroad Company, are defendants, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Springfield, in said district, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 255. The Board of Supervisors of Wayne County, impleaded with the Mount Vernon Railroad Company, appellants, vs. John W. Kennicott, Joseph W. Ward, Andrew H. Ward, et al. S. Illinois C. C. U. S. Filed 8th December, 1874.

IN THE

SUPREME COURT OF UNITED STATES.

NO 255

The Supervisors of Wayne County, Illinois, Impleaded, &c., Appellants,

v.

John W. Kennicott, Maria Myers, Administratrix of Austin Myers, deceased, et al., Appellees.

BRIEF FOR MARIA MYERS, APPELLEE,

—BY—

S. A. GOODWIN.

CHICAGO:
Beach, Barnard & Co., Legal Printers, 98 Randolph Street.
1877.

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John W. Kennicott, Maria Myers, Administratrix of Austin Myers, deceased, et al., Appellees.

BRIEF FOR MARIA MYERS, APPELLEE.

This case came before this Court, December Term, 1872, on appeal by the complainants from a decree of Judge TREAT dismissing the bill, and the case is reported in 16 Wallace, 452 to 471.

This Court then decreed that all the necessary facts to authorize the giving of the bonds sought to be recovered in the case existed, and that the mortgage and trust deed by the County of Wayne of their swamp lands were duly authorized by the law of Illinois, and the plaintiffs entitled to judgment for the amount of the bonds held by them.

When, however, the mandate came down to the court below, it appeared that, by some evident mistake, it ordered a new trial, as in case of a writ of error in a suit at law, in place of a decree for plaintiffs, as in equity suits. The court below held that this authorized new testimony

in the case. Such new testimony was accordingly put in, relating to the manner, and the consideration upon which the agents of the County of Wayne and the Mt. Vernon Railroad Company sold, and put in circulation divers of the bonds in their hands, and some detail of circumstances attending the County vote, the execution of the mortgage and trust deed, and the work done under the contract of VanDuser, Smith & Co. This testimony furnished no new light upon, nor in any way affected the points in judgment on the first appeal.

On the re-hearing, the court below held the complainants entitled to the foreclosure sought, and referred it to the Master to report the amount due to the several bondholders who had proved, or should prove up their claims on notice. The Master made his report, and a final decree was made, (Record, 360,) awarding to the administratrix of Austin Myers, deceased, the sum of one hundred and fifty thousand eight hundred and sixty-three dollars and sixty-five cents ($150,863.65), and ordering a foreclosure.

The following points and argument are submitted in behalf of Mrs. Myers, administratrix, &c.:

I.

The whole merits of this case must be considered as *res judicata* in this Court, and passed upon and settled in the case of *Kennicot* v. *The Supervisors*, (16 Wallace, 452–452,) which decided the right of the complainants to judgment upon their bonds set up in the bill, and the right to a foreclosure of the mortgage and trust deed given by the County of Wayne upon the lands in question.

These questions cannot now be re-opened or re-argued on this second appeal.

In *Roberts* v. *Cooper*, (20 Howard, 467, 481,) this Court said :

" It has been settled by the decisions of this Court that " after a case has been brought here and decided, and a " mandate issued to the court below, if a second writ of " error is sued out, it brings up for revision nothing but " the proceedings subsequent to the mandate. None of the " questions which were before the Court on the first writ " of error can be re-heard or examined upon the second. " To allow a second writ of error or appeal to a court of " last resort, on the same questions which were open to " dispute on the first, would lead to endless litigation. In " chancery a bill of review is sometimes allowed on peti- " tion to the court; but there would be no end to a suit if " every obstinate litigant could, by repeated appeals, com- " pel a court to LISTEN TO CRITICISMS ON THEIR OPINIONS, " OR SPECULATE ON CHANCES FROM CHANGES IN ITS MEM- " BERS."

In *Corning* v. *Troy et al.*, (15 Howard, 466,) this Court said:

" A second appeal lies only where the court below in " carrying out the mandate of the court, is alleged to have " committed an error. But on an appeal from the man- " date it is well settled that nothing is before the court but " the proceedings subsequent to the mandate. Whatever " was formerly before the court and was disposed of by " its decree IS CONSIDERED AS FINALLY DISPOSED OF."

The Court cite:

Hemely v. *Rose*, 5 Cranch., 313.
Carter v. *The Ocean Ins. Co.*, 1 Peters, 511.
Santa Maria, 10 Wheat., 431.
Rice v. *Wheatley*, 9 Dana, 272.

II.

The new testimony put in under the order for a new trial found in the record from page 262 to 294, consists of the depositions of S. J. R. Wilson, John N. Whiting, Charles H. Dillingham, Norman A. Smith, Augustus T. Post, A. W. Beasley, Rigdon B. Slocum, Edward Bonham, William Irvin, J. W. Barnhill, Robert T. Forth, D. Baugh and David M. Johnson, on the part of the defendants, and Norman A. Smith and Joseph G. Barkley for the complainants. (Record, 296, 300, 309, and certain letters from [redacted] 236 to 235.

This testimony, on the defendants' part, was the greater part of it incompetent for any legitimate purpose in the case, and has no force nor even a tendency to affect adversely the former decision of the Court on the questions of the power of the railroad to create the bonds in this case, or the power of the county to mortgage their swamp lands, or the due execution of the mortgage and trust deed in this case, or the due utterance, issue and putting in circulation by the officers of the Mt. Vernon Railroad Company, and the agents of the county of Wayne, of such bonds, or of the legal *bona fide* ownership of the same by the complainants in this suit, and especially of Austin Myers, in whose behalf this brief is submitted.

III.

If, however, the former decision is in any respect to be reviewed, its entire soundness can be triumphantly maintained, on principle and authority, referring to the argument (with authorities cited,) made up and signed jointly by the counsel on the former argument and filed, and which is reproduced in the separate brief of Judge Scates, now filed by him, and to which we refer.

This argument of fact and law fully sustains the complainants' right to the relief sought, as *bona fide* holders of negotiable paper, and the argument is presented with the force of the conviction we then entertained and presented to the Court.

IV.

There is no evidence on this record either as formerly presented or in the new testimony put in, which in any respect impugns or affects the *bona fides* of the ownership of the bonds claimed by Austin Myers, the decedent complainant, or his right to recover.

A. What are the facts as to this claim and these bonds? The bill (Record, page 20) alleges that Austin Myers is the *bona fide* owner and holder of the bonds claimed. The defendant's answer does not impeach this by any specific allegations, but only puts in the general denial.

In the case of *Bronson* v. *La Crosse Co. et al.*, (2 Wallace, 283,) this Court held that:

"Parties holding negotiable instruments are presumed "to hold them for full value, and whether such instru- "ments are bought at par or below it, they are, generally "speaking, to be paid in full when in the hands of *bona* "*fide* holders for value. If meant to be impeached, they "must be impeached BY SPECIFIC ALLEGATIONS DIS- "TINCTLY PROVED."

So far from any such allegations being made or proved, we have shown affirmatively the purchase for value of these bonds by Myers. He says, in his own deposition, taken December 4, 1869, (Record, p. 134,) "That in or "about the year 1860, he purchased construction bonds

" to the amount of sixty-three thousand dollars, for cash,
" of Norman A. Smith."

Smith was treasurer of the Mt. Vernon Railroad, and he says (Record, p. 274) that one-half the bonds were given to Wayne county, and one-half were retained by him as treasurer of the company, and used as collateral security for loans and for money that was expended on the road. Mr. Smith, being re-called, says, (Record, pp. 296 and 297): " I acted as treasurer up to 1860. I cut off the " coupons from the bonds as they became due, and filed " them away in the company's safe; that is upon all bonds " not issued and in my possession; and so kept them until " my resignation as treasurer, and then turned them over " to my successor, Mr. Lewis. Mr. Myers had his bonds " of one Kendrick, who had the bonds from me. I gave " the bonds to Mr. Kendrick for currency on a Southern " bank, to be used in a contract for iron on said road. " Austin Myers came to me to know if Mr. Kendrick was " the *bona fide* owner of the bonds, and I told him I had " let him have them for currency, as aforesaid."

It thus appears that the over-due coupons for interest were cut off at the time Myers took the bonds. These bonds took effect as legal instruments in the hands of the holder from the time of delivery.

The Bank of Utica v. *Wager*, 8 Cowen, 397.

There was at that time no installment of interest or coupon over-due and unpaid on the bonds.

The other half or $400,000 of the bonds which Smith says were delivered to the county of Wayne, were delivered to S. J. Wilson, County Judge, June 18, 1860, in pursuance of an order of the county court of Wayne County. (See order and receipt, Record, page 91.)

It further appears, by the agreement proved between the

county and the Mt. Vernon Railroad Company, of April 27, 1859, (Record, page 89,) to have been arranged that each should use one half of said $800,000 of bonds there recited to have been issued, and secured by the said mortgage and trust deed upon the one hundred thousand acres of swamp lands before mentioned, as is also recited in the bonds themselves.

B. On this state of facts the rules of law, as settled by the authorities, are unmistakable.

Bonds and coupons stand on the same footing as bank notes.

Redfield on Railways, 5 Ed., pages 531, 532, 533 and notes.

They are negotiable instruments.

White v. *Railroad*, 21 Howard, 575.
Moran v. *Commissioners*, 2 Black., 722.
Mercer Co. v. *Hacket*, 1 Wallace, 83.
Gelpcke v. *Dubuque*, 1 Wallace, 176.
Meyer v. *Muscatine*, 1 Wallace, 385.

These authorities establish further that a municipal or other corporation (having power to issue bonds) is estopped from denying the existence of the necessary facts or the correctness of the recitals in the bonds in such cases, or the regularity of their execution as against the *bona fide* holder.

Nor can the corporation in such case show the bonds irregularly issued, or fraud in their own agents in putting them in circulation.

Grand Chute v. *Winegar*, 15 Wallace, 356.
City of Lexington v. *Butler*, 14 Wallace, 282.

In the case of *Bronson* v. *LaCrosse*, 2 Wallace, 283, (*supra*), this Court held that :

" Where a mortgage is made in express terms subject " to certain bonds secured by prior mortgage, these bonds " being negotiable in form, and having in fact passed into " circulation before such former mortgage was given, the " junior mortgagees, and all persons claiming under " them, are estopped from denying the amount or validity " of such bonds so secured, *if in the hands of bona fide* " *holders*. Parties holding negotiable instruments ARE " PRESUMED TO HOLD THEM FOR FULL VALUE, and " whether such instruments are bought at par or below " it, they are generally speaking to be paid in full when " in the hands of *bona fide* holders for value."

In the case of *Murray* v. *Lardner*, 2 Wallace, 110, the *status* of *bona fide* holders of negotiable paper upon the question of notice of defects in the title was learnedly and exhaustively discussed by the counsel and the Court. It was there settled that :

" Coupon bonds of the ordinary kind, payable to " bearer, pass by delivery. And a purchaser of them in " good faith is unaffected by want of title in the vendor. " The burden of proof on a question of such faith lies on " the party who assails the possession."

The Court there deny the authority of *Gill* v. *Cubit*, 3 Barnwell & Cresswell, 466, and approve *Goodman* v. *Harvey*, 4 Adolphus & Ellis, 870, and re-affirm the cases of *Goodman* v. *Simonds*, 20 Howard, 343, and *Bank of Pittsburgh* v. *Neal*, 22 Howard, 96.

In the case of *Goodman* v. *Simonds*, Judge CLIFFORD, in delivering the opinion of the Court, says :

" This principle is so comprehensive in respect to bills " of exchange and promissory notes which pass by de- " livery, that the title and possession are considered one

" and inseparable, and in the absence of any explanation, " the law presumes that a party in possession holds the " instrument for value until the contrary is made to ap- " pear, *and the burden of proof is on the party attempting* " *to impeach the title.*"

The only exception ever made in the books to this established commercial rule has been, that where the defendant shows affirmatively that the instrument sued on was lost or stolen, or obtained or put in circulation fraudulently, in such case the plaintiff must show that he gave value for the paper, not having notice. All of which is wide of the facts here, and without application.

Edwards on Bills, 690.

As bearing upon this case, contended by defendant below, we may add that it is well settled doctrine that if an agent is entrusted with the disposition of negotiable securities or instruments, and he disposes of them by sale or pledge, or otherwise, (contrary to the orders of his principal), to a *bona fide* purchaser, without notice, the principal cannot reclaim them, for the reason that the principal in all such cases holds out the agent as one having unlimited authority to dispose of and use such instruments as he pleases.

Story on Agency, § 228. Citing Paley on Agency, by Lloyd, 90 to 95, 233 to 238. 1 Livermore on Agency, 304–5, Ed. 1818. *Coddington* v. *Bay*, 5 John. Chancery R., 54, S. C. 20 J. R., 637.

The opinion of Judge DRUMMOND, on rendering the decree appealed from, is in accordance with these principles and authorities, and is found in 6 Bissel, 7th Circuit Reports, 138, to which we refer.

We submit that the decree should be affirmed.

S. A. GOODWIN,
Of Counsel.

IN THE

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OF THE UNITED STATES,

No. 255,

OCTOBER TERM, A. D. 1876.

JOHN W. KENNICOTT, et al.,

Appellees.

ads.

THE SUPERVISORS OF WAYNE COUNTY,

Appellant.

Brief and Argument for Appellees.

WALTER B. SCATES,

COUNSEL FOR APPELLEES.

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I

OUTLINE OF THE CASE.

1. On the 20th day of April, 1859, the Mt. Vernon Railroad Company made its construction bonds in the aggregate of $800,000, payable in fifteen years, bearing interest at 7 per cent. per annum, payable half yearly—with interest warrants attached—and principal and interest payable to bearer on presentation at the Bank of North America, in the city of New York.

2. On the same 20th day of April, 1859, and as part of the same transaction, the County of Wayne by its County Judges executed and delivered its mortgage and deed of trust to Isaac Seymour, as Trustee, upon one hundred thousand acres of its swamp and overflowed

lands, to secure the payment of the pricipal and interest of said bonds: wherein it is recited that by virtue of an act of the State of Illinois, of the 22d day of January, 1852, entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," and which said act authorized the appropriation and disposal of said lands for such purposes as may be deemed expedient by the court or county judges; and further recited that the Legislature of said State passed an act on the 15th day of February, 1855, entitled "An act to incorporate the Mt. Vernon Railroad Company," whereby the county of Wayne was duly authorized and empowered to make such disposition of the swamp and overflowed lands within the said county of Wayne in aid of the construction and maintenance of said railroad, as they deem best for the public interest of said county; it is further therein recited that the county court of Wayne county prepared a proposition in the following words; "For appropriating the swamp lands of Wayne county as a bonus to any company for building a railroad through said county" and "against the same," which said proposition—after due notice being given—was submitted to the people of said county, for adoption or rejection, at an election held on the 5th day of November, 1855—and that the same was approved and adopted by a majority of all the voters voting at said election, which vote was duly canvassed, declared, and return thereof made according to law: whereupon the county court did adopt said proposition, and did order, adjudge, and determine to execute a mortgage in conformity to such proposition or plan, and to

the provisions of this instrument, for the purpose of aiding in the construction and maintenance of said Mount Vernon Railroad—which said order was duly made in open court on the twentieth day of April, 1859: and that by virtue of said several acts and proceedings, the county of Wayne have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said Mt. Vernon Railroad Company; and the said county judges of Wayne county deem it best for the public interest of the said county of Wayne that the lands should be mortgaged to Isaac Seymour, as Trustee, for the purposes expressed. It is provided, amongst other provisions in said deeds, that in case at any time interest to an amount equal to one whole year's interest upon said $800,000 shall become due, and shall remain unpaid and in arrear, that then the whole of said bonds, principle and interest, shall become due and payable. In witness whereof, the said parties of the first part have hereunto set their hands and seals, and the seal of the said county court.

S. J. R. Wilson. Thomas M. Scott, Judge. [Seal.]

3. The orders of said county court, referred to in the recitals, are as follows: "At a special term of the county court of Wayne county begun and held at the court-house in Fairfield, on the 20th day of April, 1859, present Hon. S. J. R. Wilson, Judge, Thomas M. Scott, Associate, J. W. Barnhill, Clerk. And now on this day the court executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands

lying in said Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, which is entered of record in the Recorder's office of said county in Mortgage Book B, pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour as collateral security—to *enable* the *Mt Vernon Railroad Company to procure money to build a railroad through Wayne county from the eastern boundary of said Wayne county to Mount Vernon* in Jefferson county: and which said mortgage is referred to and is recorded in the Recorder's office of said Wayne county in Mortgage Book B, pages 341 to 359. And it is ordered by the court that Sam'l J. R. Wilson be, and he is hereby appointed a commissioner to act as the attorney of the said Isaac Seymour, Trustee as aforesaid, in the said county of Wayne, State of Illinois."

4. It is admitted by the attorneys of the county in their former argument that there was no irregularity in the way the power was exercised in making this mortgage, and that the foreclosure is not resisted on any such ground. (See former printed argument of appellee's counsel, p. 36.)

5. The appellees filed this bill in 1865 in the Circuit Court of the United States for the Southern District of Illinois against the appellant, for a foreclosure of the mortgage and deed of trust referred to, and for a sale of the mortgaged premises; and they allege that they are the *bona fide* owners respectively of large amounts of said bonds purchased by them respectively in good faith,

in the usual and open market for such securities, in the due and usual course of trade for a valuable consideration paid therefor. They further aver that interest is due and unpaid and in arrear, equal in amount to one year's interest upon the whole amount of $800,000 issued by said Mount Vernon railroad; that no interest has ever been paid upon any of said bonds, and that the conditions of said mortgage and deed of trust have been broken, and that the whole of the principal and interest of said bonds for $800,000 has become due and payable, and that they have become entitled to have a foreclosure of said deeds of mortgage and trust, and a sale of the mortgaged premises for the payment of the debts and interest due them thereon. They further aver that Isaac Seymour, the grantee and trustee therein, has departed this life, and that no successor in this trust has been nominated or appointed, and that all the trusts in said deeds provided remain wholly unexecuted by said Seymour in his life time. The bill further avers that Wayne county was authorized and empowered to make said deeds to aid in the construction of a railroad in Wayne county, and in the construction of the Mount Vernon railroad, and any other railroad.

The prayers of the bill for relief are—

That a trustee be appointed.

That an account be taken of the amount due each complainant.

That a decree be rendered for the amount due each.

That a decree of foreclosure be rendered, and that the mortgaged premises be sold.

lying in said Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, which is entered of record in the Recorder's office of said county in Mortgage Book B, pages 330 to 341; and also executed a mortgage on the same lands to the said Isaac Seymour as collateral security—to *enable* the *Mt Vernon Railroad Company to procure money to build a railroad through Wayne county from the eastern boundary of said Wayne county to Mount Vernon* in Jefferson county: and which said mortgage is referred to and is recorded in the Recorder's office of said Wayne county in Mortgage Book B, pages 341 to 359. And it is ordered by the court that Sam'l J. R. Wilson be, and he is hereby appointed a commissioner to act as the attorney of the said Isaac Seymour, Trustee as aforesaid, in the said county of Wayne, State of Illinois."

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The prayers of the bill for relief are—

That a trustee be appointed.

That an account be taken of the amount due each complainant.

That a decree be rendered for the amount due each.

That a decree of foreclosure be rendered, and that the mortgaged premises be sold.

And that such other and further relief be given as to equity appertains.

ANSWER.

6. The appellant filed an answer admitting the non-payment of interest upon the bond, and that no provision has been made for its payment.

All other allegations of the bill are denied.

7. A general replication was filed.

8. The Circuit Court, on first hearing, dismissed the bill, and on new trial entered a decree of foreclosurue and for a sale.

BRIEF OF POINTS AND AUTHORITIES.

I.

1. The forms of the bond, mortgage, and deed of trust are correct—the substance sufficient—and their proper and due execution are not denied; and no objection is taken thereto in the answer.

II.

2. The conditions of the mortgage and deed of trust have been broken by the non-payment of interest, and this is admitted in the answer, and the appellees' right to recover and to have a foreclosure and sale have become complete and absolute.

III.

3. The appellees' were *bona fide* purchasers for a val-

uable consideration paid, and made their purchases of these bonds, which are payable to *bearer*, and pass by delivery, like money, in open market. and in the regular and due course of trade, in such securities.

4—*a*.The county of Wayne the appellant, received the bonds, (see the contract, Casey's order, Hersey's receipt, receipts of Wilson & Lewis,) put the bonds upon the market and sold them, and received the money for them. And the county still retains the proceeds of the $400,000 of bonds delivered to it by the Mt. Vernon Railroad Co.

5—*b*. In the division of the bonds, between the Mt. Vernon Railroad Company and Wayne county, the county got one-half of the amount issued, viz: $400,000. (See Hersey contract.) Casey, as president of the company, ordered the treasurer to deliver them to Hersey, and Hersey's receipt for part is in the record. (See also for balance of the $400,000, Grant's deposition.

Hersey's receipt shows that the bonds of the denomination of $1,000 delivered to him, were numbered consecutively from 300 to 600 inclusive.

Of these $1,000 bonds delivered to Hersey, as trustee or custodian for Wayne county, under that contract 73 of them amounting to $73,000, areowned by 10 of the appellees' and these bonds were sold and the money for them received by Wayne county or its duly authorized agents, and these bonds now belong to the above appellees' in this case, and are, with other bonds, the ground of action in this bill. (See Grant's deposition, Smith's deposition.

6—*c*. The proofs show that the railroad project, in aid of which the bonds were issued and mortgage given—viz: a line of road running across Wayne county and connecting with other railroads through the Mt. Vernon railroad—was not only commenced, but was partially constructed, by means derived from the sale of said bonds. To be more explicit, the entire line from Ashley, on the Illinois Central, eastward to and across Wayne, and to a point on its east boundary line—thus passing entirely across the county, from its east boundary to its west boundary, and on west by Mt. Vernon to Ashley—was not only surveyed and located, but the line was cleared or cut out, grubbed, and ties prepared and distributed along the line halfway across Wayne county, *i. e.*, from Fairfield to its western boundary, and thence westward by Mt. Vernon to Ashley; and a large part of the grading was done, culverts were built, and timbers for bridges were gotten and prepared between Mt. Vernon and Ashley.

7—*d*. All this work of construction was done by the Mt. Vernon Railroad Company as the assignee of and in pursuance and fulfillment of the contracts made by Wayne and Jefferson counties with Vanduser, Smith & Co. for the construction of parts of the whole line, which contracts had been assigned to said Mt. Vernon Railroad Company.

8—*e*. It is thus evident that Wayne county received the benefit of a partial construction of one of the links in the line of railroad contemplated, in aid of which said

bonds and deeds were made, although the contractors failed to complete the same.

The purchasers of such bonds as these are not required to see to the faithful application of the purchase money. Nor do purchasers hold such bonds, subject to be repudiated in case of a failure of success in the enterprise for which they are issued.

Even if the reverse of these propositions were true, equity would not allow the county to repudiate its bonds, or its mortgage to secure them, without returning the money received from those to whom it sold them.

9—*f*. It is apparent to the court, from the facts in this case, that the defence set up here would be equally good and available, even had the road been completed and was now in successful operation.

And this shows how unjust and unconscionable such repudiation is, when set up as a defence against the fair *bona fide* holders of such securities.

IV.

12. All the presumptions of law and equity are in favor of the rights of the appellees to recover upon their bonds and mortgage.

11—*a*. These deeds were executed in open court, by the judges of the county court, for the county, sitting officially as a court, and affixing the county seal to the deeds, and entering up an order of court upon the records of the court, it becomes notice to all purchasers

that the bonds are valid, and the mortgage binding on the county.

12—*b*. These deeds, then, are and must be taken and treated as the deeds and acts of Wayne county, and this would be the case even if the judges had acted only in the capacity of agents instead of that of a court; and being the acts and deeds of the county, in equity, the appellant cannot be received or allowed to contradict the recitals and provisions of these deeds; nor can appellant contradict the Records of its own county court; but its mouth, in equity, must be forever closed as to these deeds and Record, as it would be estopped in a court of law, unless it will show that these transactions were tainted with fraud. Appellant cannot, therefore, be heard upon, or allowed to make objections of this character. Such defenses are unavailable in such circumstances in a court of equity.

13—*c*. The maxim that one who asks equity must do equity will apply. Before it can repudiate the acts of its own officers and agents upon the ground that no road was built and completed, it would be required to return to the appellees all the money received by it for the sale of these bonds. But we by no means admit that such payment back would entitle the county to be relieved of its obligations.

V.

1. The main question in this case is, whether Wayne county, by its duly constituted officers, had the power to make the mortgage and trust deeds upon which this suit is founded?

There are four distinct and different sources, from either of which Wayne county derives full and ample power to make the mortgage and trust deeds sued on.

15—1st. The general statutes of Illinois authorize counties to sell and convey any real estate belonging to the county, and to appoint agents to do so for it, and also to make contracts, whose acts bind it.

(See acts set out in appellees argument.

16—*a*. The county also has full power and right, and is under obligation, to open, construct, and repair roads and bridges.

(People *ex rel.* of Hoes *vs.* Canal Trustees, 14 Ill. R. 402)
(Dennis *vs.* Maynard *et al.*, 15 Ills. R. 477.)

17—2d. The general swamp act of February 14, 1859, gives general and unlimited power and discretion both as to selling swamp lands and over the disposition of the proceeds.

18—*a*. Section four of this act not only gives or re-affirms unlimited power and discretion to sell swamp lands, but it expressly autorizes the county authorities to carry into effect any previous and existing contracts "for the disposal of their swamp lands" as they may deem best, without restriction as to the mode of conveyance, or as to the purposes to which the proceeds shall be applied.

19—*b*. To show the application of this statute to the case now before the court, it is in proof that previous to

the passing of this statute, Wayne county, in pursuance of a vote of the people, and by virtue of authority derived from the tenth section of the Mt. Vernon railroad charter, conveyed its swamp lands to Charles Wood, in trust, to aid the construction of the Bellville and Fairfield Railroad Company and the Alton, Mt. Carmel and New Albany Railroad Company in that portion of these lines, lying across Wayne county, and which said conveyance, so made and declared in it to be made under the power and authority derived from the tenth section of the Mt. Vernon railroad charter and the vote of the people of Wayne county, was afterwards recognized and declared to be legal and made *valid* by the fourth section of the act of July 11, 1857, amending the charter of said Bellville and Fairfield Railroad Company.

The road not being built, Wood, at the request and by order of the county, conveyed said lands to Wayne county in trust for the use of the people in said county, to aid in the construction of a railroad across said county. See deed of conveyance.

20. In pursuance of this object Wayne county made a contract with Vanduser, Smith & Co., on the 19th of November, 1858, (see contract,) to build a railroad upon the same line above described, viz: from the eastern boundary of said county, entirely across and on westward to Mount Vernon, in Jefferson county, passing entirely through and across Wayne county, from east to west, and connecting with the Mount Vernon railroad at Mount Vernon, and to convey these swamp lands, in payment thereof, at $5 per acre. This building contract

after the passage of the above act of February 14, 1859, was assigned to the Mount Vernon Railroad Company, and said company, as assignee, thereupon accepted said assignment, and undertook to build this line of railroad from the eastern boundary of Wayne county westward entirely across said county, and was entitled to said swamp lands in payment therfor. It was afterwards found that the means for constructing this line of road, which was to be paid for in these swamp lands at $5 per acre, could not be obtained by the mere sale of these lands in the market, as they would not bring that price at that time. Thereupon the county and the Mount Vernon Railroad Company, upon consultation, adopted the plan by which the Mount Vernon railroad was to issue its bonds, as before stated, for $800,000, and secure them by a mortgage deed of trust upon its own franchise and all its property; and Wayne county was further to secure them by the deeds of mortgage and trust of these same swamp lands, the equitable right to which became vested in the Mount Vernon Railroad Company as assignee of this contract. In the meantime, and before the formal assignment of said building contract was made to the Mount Vernon Railroad Company, the above statute of February 14, 1859, was passed, which in effect confirmed and established the power of Wayne county to apply its swamp lands in pursuance of its previous and then existing contract to build its railroad; and thereupon, and under the full and ample powers conferred by said act, Wayne county proceeded to mortgage these lands by virtue of the powers conferred by this act and

the special charter of said Mount Vernon and Bellville and Fairfield Railroad Companies. Were there no other sources of power besides this act, we submit to the court that this alone would be sufficient, and the validity of this "transaction" is recognized by said act.

21. 3d. Another and distinct source of power in Wayne county to make the deeds sued on, might be derived from the charter of the Bellville and Fairfield Railroad Company, and from the provisions of the act of February 11, 1857, amending said charter.

By the 14th section of this original charter an election is provided to be held before these swamp lands can be donated to railroad purposes under this act; but it prescribes no form in which the question shall be submitted to the people at such election. Wayne county held an election on the 5th of November, 1858, upon a proposition to donate these lands as a bonus to *any company* that would build a railroad through Wayne county.

22. In pursuance of this vote Wayne county conveyed these swamp lands to Charles Wood in trust. The 4th section of the amended act, subsequently passed, confirmed and made legal the vote that had been taken and the deed to Wood for that purpose; and the 5th section gives general power to every county through which this road runs to donate its swamp lands to this line of railroad.

In pursuance of this policy, and to accomplish the object of building a railroad across and through Wayne

county, and thence westward to Mt. Vernon, in Jefferson county, and there connecting with the Mt. Vernon railroad, and by its line of road reaching an outlet or connection with the Illinois Central at Ashley, on the 19th day of November, 1858, Wayne county entered into a contract with Vanduser, Smith & Co., for building that part of the line of said Bellville and Fairfield railroad which lies between the east line of Wayne county and Mt. Vernon, in Jefferson county, thus running entirely across said county of Wayne and into part of the adjoining county of Jefferson, and therein agreed to pay the same by conveyance of these swamp lands to the contractors at the rate or price of $5 per acre.

23. This contract was afterwards assigned to the Mt. Vernon Railroad Company, (see assignment, Record) and the same was accepted by said company, and said company became liable, and undertook to perform the same as such assignee, and also became equitably entitled to the conveyance thereunder, of said swamp lands upon the performance of said work in accordance with the provisions of said contract.

Wayne county and the Mt. Vernon Railroad Company finding it impracticable to raise the money to build this line of road, by a simple or direct sale of these lands under said building contract, consulted together and adopted the plan of raising the necessary means of building the line, by issuing the bonds of the Mt. Vernon Railroad Company for $800,000, and securing the same by the mortgage and deeds of trust upon which this suit is founded. One-half of these bonds, viz: $400,000 were

delivered to and received by Wayne county to be sold, and the proceeds applied exclusively to the construction of that part of the line embraced in said building contract.

Wayne county, by its agents, sold these bonds in open market, and received the proceeds.

And a large part of those identical bonds are owned by appellees, and payment of them sought by this bill.

23. 4th. A still further separate and independent power conferred upon Wayne county, to make the mortgage and deed of trust sued on, by the 7, 8, 9, and 10 sections of the charter of the Mount Vernon Railroad Company.

By the 10th section of this act it is provided, "That any county through which said road nay run, and every county through which any other railroad may run, with which this road may be joined, connected, or intersected may, and are hereby authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect, and for this purpose the provisions of the 7th, 8th, and 9th sections of this act shall extend to, include and be applicable to *every such county* and *every such railroad*."

25. The only question as to the power arising under this statute is this, viz: Whether the Bellville and Fairfield railroad (now called the St. Louis and Louisville railroad) is one which comes within the provisions of this tenth section? In other words, Is this such a road

as may be *joined*, *connected*, or *intersected* by the Mount Vernon road? If it is so, this section gives the power required to enable the county of Wayne to make the deeds of mortgage and trust in question.

26—1. The Bellville and Fairfield railroad was a road which, when located in accordance with its charter, might and would be joined and connected with the Mt. Vernon road. This is seen by examination of the map in connection with the charter, by which it is shown that the two roads were to pass over and along the same route across Wayne county, through Mt. Vernon, and thence to Nashville. Ashley, the western terminus of the Mt. Vernon railroad, is on the direct line from Mt. Vernon to Nashville. Therefore, the Bellville and Fairfield railroad was to pass the whole length af the Mt. Vernon railroad, and through both of its termini, and was, therefore, a road which joined, connected, and intersected the Mt. Vernon railroad, within the meaning of the said tenth section.

29. This section 10 expressly authorizes aid to be given to the construction of roads out of the county. In another instance in Illinois, the Legislature of Illinois authorized the city of Quincy to donate bonds in aid of a railroad in Missouri, terminating opposite to Quincy.

(See Session Acts, 3 vol. Private Laws, 1869, p. 370.)

The same has been done in Mississippi, New York, and South Carolina.

(White *vs.* Syracuse R. W. Co., 14 Barb., 559.)

(Bell *vs.* Railroad Co., 4 Wall. 598.)

(Copes *vs.* Charleston, 10 Richardson, 491.)

All such enabling and remedial acts are entitled to a liberal construction, to promote the object sought.

(Story, Com. Const., 411, 412.)

(Christholm *vs.* Georgia, 2 Dallas, 419.)

McCulloch *vs.* Maryland, 4 Wheat, 316.)

VI.

28. Having shown that Wayne county was authorized to make the deeds of its swamp lands, under either of the four powers above stated in the last point, V, it is obvious that if said county exercised the authority under either the third or fourth power above enumerated—that is to say, under the charter of the Bellville and Fairfield or the Mt. Vernon railroad—it was necessary to submit certain questions to the vote of the people of Wayne county; and it became the duty of the county court of Wayne county to inquire if the questions had been so submitted and the vote taken, and to ascertain and determine the same. All these proceedings were had in due form of law by the county, through the agency of its duly constituted court, and were regularly entered and recorded on the records of the court of said county *in extenso*—and in reading the records of said court it will be seen that the foregoing transactions were so recorded by the deeds of mortgage and trust, on which this suit is founded, with all the recitals of facts, now called in question by the appellant, are fully and distinctly set forth.

The county having thus officially admitted and as-

serted all the acts necessary to its authority to make the deeds in question, cannot be lawfully permitted to deny or disprove its own acts.

Galpeke *vs.* City of Dubuque, 1 Wall. 203.
Com'r of Knox county *vs.* Aspinwall, 21 How. 539.
British Bank *vs.* Tarquand, 6 E. & B., 327,
Tanner's L. & T. Co., *vs.* Curtis, 3 Selden, 460.
Stoney *vs.* A. & J. Co., 11 Page, 635.
Morris Canal & B. Co. *vs.* Fisher, 1 Stick. ch. 667.
Wilmarth *vs.* Crawford, 10 Wend., 343.
Allegheny City *vs.* McClarkan, 14 Penn., 83.
Mercer Co. *vs* Hackett, 1 Wall., 83.
Rogers *vs.* Burlington, 3 Wall. 654.
Moran *vs.* Com'rs of M. Co., 2 Black, 722.
U. S. *vs.* Benning, 4 Cranch, C. C. R., 81.
West *vs.* Peoria, 4 Wash. C. C. R. 691; 2 Peere Williams 432; Wills. Rep. 9; 1 Salk. 276, 285; 6 Mod. 44; 6 T. R. 176; 2 B. & Ald, 242; Com. Dig. 35; Co. Litt 352–*a*; 3 James Co., 174; 4 Binney, 251, 314; 17 Mas. 244, 571: 4 Pet., 1; 6 Pet., 598.
Woods vs. Lawrence, 1 Blk., 386.
James *et. al vs.* City of Milwaukee 16 Wall. R., 159.

In addition to the foregoing, the county of Wayne is also bound by the recitals of facts contained in its deed of its swamp lands to Charles Wood, and by its contract with Vanduser, Smith &C., for the construction of this line of railroad, as this deed and this contract were part of the *res gestæ*, and were made in pursuance of the same policy and object, as were the deeds to Seymour, all relating to the construction of a railroad through said county

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and these recitals also admit and declare all the facts, showing the authority of the county to convey its swamp lands for this purpose.

And the legal validity of this deed to Wood, and the correctness of the proceedings upon which it was founded, were confirmed by the 4th section of the act of the Legislature of Illinois of February 11, 1857.

See section appellees' argument.

That the facts set forth in these recitals cannot now be disputed by the county.

See also—

Moran *vs.* Com'rs of Miami Co., 2 Black, 722.
Rogers *vs.* Burlington, 3 Wall., 654.
U. S. *vs.* Bennington, 4 Cranch, C. C. R., 81.
West *vs.* Pine, 4 Wash., C. C. R., 691.
Wood *vs.* Laurence Co., 1 Black., 366.
Supervisors *vs.* Schenck, 5 Wall., 784.

VII.

The aid given in the Seymour mortgage by Wayne county was not to aid in building the Mount Vernon railroad, but was given to the Mount Vernon Railroad Company, *as assignee* of the railroad building contract of Wayne county with Vanduser, Smith & &o., to enable it to raise money to construct the railroad provided for by that contract to be built through Wayne county, (see order of County court at the execution of deeds. The Hersey contract set apart and appropriated $400,000 of the funds to be raised for the construction of that part of the line provided for in the Wayne county contract

above named. Therefore the objection made by appellee, that Wayne county could not give aid to the construction of the Mount Vernon railroad, because its line could not run into or touch any part of Wayne county, has no force, pertinence, or validity; for the aid given as we have shown, was given to aid the Mount Vernon Railroad Company as the *contractor*, by assignment of the said building contract, to enable it, as such contractor, to construct a railroad through Wayne county, and *was not given* to aid in the construction of its own line of road.

VIII.

The policy of the Legislature of Illinois has always been large and liberal, to aid in building railroads, and to enable localities, not situated upon thoroughfare lines, to give local aid in building and connecting local lines with the great commercial railroad arteries. These acts show that such is the policy in this case; and the object aimed at is, to enable these counties, with these swamp lands, to give such aid and donations as may tend to effect the construction of such local roads or parts of a longer line. Therefore all acts relating to this subject should be construed liberally, with a view to enable counties to carry out that policy.

In James *et al.*, *vs.* The City of Milwaukee, 16 Wall. R. 159, this court says: "The intention of the Legislature is to be sought for. That, whatever it may be, constitutes the law. If it had been intended to limit the scope of the act to pre-existing corporations, we cannot

doubt that the term *heretofore*, or some equivalent phrase, would have been employed in the proper place." "The language is, 'any other railroad company duly incorporated and organized.'" "No tense is expressed, and no particular time is indicated. There is nothing which limits and points its meaning any more to companies then, than to those thereafter organized." "This view derives support from the plain reason and object not only of this act, but of the entire series of acts upon the subject. They are all *in pari materia*, constitute a common context, and are to be regarded as if embraced in the same statute.—(Smith Com., 758.") So in the case before the Court, beside the general statutes, these two charters give the power of sale and mortgage; and the 8th section of the Mount Vernon charter (appellees' argument, p. 3) adds thereto the power of "making such other disposition" as the county court may "deem best for the public interest of said county." To these were added enlarged powers, and a confirmation of the deed to Wood made upon a popular vote taken, (see appellees argument, pp. 26, 27;) and to these is added the general act of 1869, (see argument, pp. 16 and 17,) not only giving unlimited power and discretion as to the disposition of these lands and proceeds, but preserving their powers in existing special acts and in existing contracts. Taking these altogether, as "in the same statute," and the policy, object, and intent of the Legislature are plain, that no technical construction or informality should stand in the way of giving these lands in aid of constructing railroads in these counties.

This court further says, in James *et al.*, *vs.* the City of Milwaukee: "The *construction practically given* by the parties interested, as evinced by their conduct, is in harmony with the views we have expressed and *is not without weight.* (Myer *vs.* Muscatine, 8 Wall. 58.) The Common Council deliberately passed the ordinances, the electors approved them, the Mayor subscribed and issued the bonds, the companies received them as valid. We do not learn that there was any doubt or dissent as to the question of legal authority until after both companies had become hopelessly bankrupt."

These acts and practical construction run a complete parallel with the case at bar. No question was raised, or doubt of the power and right of Wayne county to make these deeds was ever entertained or oxpressed by the county officers or others, during all these transactions, or for years afterwards; nor did these officers or any other person ever doubt that these deeds were the deeds of the county.

IX.

I will next notice and answer the objections taken by the appellant to a foreclosure and recovery.

Appellant admits in its answer the condition of the deeds sued on as broken by its failure to pay or provide for the payment of interest. (See appellant's former argument, p. 36.)

And in said argument it waives all ground of objec-

doubt that the term *heretofore*, or some equivalent phrase, would have been employed in the proper place." "The language is, 'any other railroad company duly incorporated and organized.'" "No tense is expressed, and no particular time is indicated. There is nothing which limits and points its meaning any more to companies then, than to those thereafter organized." "This view derives support from the plain reason and object not only of this act, but of the entire series of acts upon the subject. They are all *in pari materia*, constitute a common context, and are to be regarded as if embraced in the same statute.—(Smith Com., 758.") So in the case before the Court, beside the general statutes, these two charters give the power of sale and mortgage; and the 8th section of the Mount Vernon charter (appellees' argument, p. 3) adds thereto the power of "making such other disposition" as the county court may "deem best for the public interest of said county." To these were added enlarged powers, and a confirmation of the deed to Wood made upon a popular vote taken, (see appellees argument, pp. 26, 27;) and to these is added the general act of 1869, (see argument, pp. 16 and 17,) not only giving unlimited power and discretion as to the disposition of these lands and proceeds, but preserving their powers in existing special acts and in existing contracts. Taking these altogether, as "in the same statute," and the policy, object, and intent of the Legislature are plain, that no technical construction or informality should stand in the way of giving these lands in aid of constructing railroads in these counties.

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tions to a foreclosure on account of irregularity in the manner in which the power was exercised in making the mortgage. (See same argument, p. 36.)

The appellee further admits in its brief, (see same argument, p. 22,) that "these acts *unquestionably authorize* and *empower* a county to sell and convey real estate which it may own, and of course, use the proceeds in any legitimate manner."

But appellant resisted the foreclosure: *first*, upon the simple ground "that, under all the circumstances set forth in this record, no power whatever existed in Wayne county, or in any of its officers, to execute this mortgage." (Same argument, p. 36.)

And, *second*, the appellant add to this another objection, viz: That the bonds in question were not issued to aid in the construction of any railroad included within the terms of the statutes which authorized the appropriation of the lands mortgaged.

Appellees, in reply to these grounds of objection, answer that there are four sources of power to do this act:

1st. The general statues relating to the sale of the lands of counties.

2d. By the act of February 14, 1859.

3d. By the charter and amended charter of the Bellville and Fairfield railroad.

4th. By the Mt. Vernon railroad charter, secs. 7,8,9,10

I further answer that—

The appellant admitted in former argument, (page 22,) that "these acts unquestionably authorize and empower a county to sell and convey real estate which it may own, and, *of course, use the proceeds in any legitimate manner.*"

This is a concession of all we are asking. I claim that the county has the power to sell and convey, and it is conceded. I claim that the general swamp act of February 14, 1859, sec. 3, places the proceeds "subject to the order of the county judge for such purposes as the County Court may direct." I claim that the County Court "*directed*" the lands to be mortgaged to raise money to build a railroad through the county, and that this is a use of them in a "legitimate manner;" appellant conceded that such use is thus virtually authorized and legal. (See appellants former argument, p. 22.)

I claim that the 4th section of the amended charter of the Bellville and Fairfield railroad expressly sanctioned, confirmed, and made legal and valid the *donation* of these lands made to that company and the Alton, Mt. Carmel and New Albany Railroad Company for the purpose of constructing a railroad through Wayne county, Appellant admitted that if this manner of using them is legitimate, that it is then within the authority and power conferred by this act.

I claim that the 7, 8, 9 and 10 sections of the Mt. Vernon railroad charter conferred the power to donate

these lands to the building of a railroad through Wayne county upon a vote of the people. I claim that the vote was taken sanctioning it; I claim that in pursuance of these preliminary acts, Wayne county did donate them to this object, and conveyed them to Charles Wood, in trust, to aid the Bellville and Fairfield, and Alton, Mt. Carmel and New Albany Railroad Companies, and to enable them therewith to construct a railroad through Wayne county; and I claim that the legislature expressly confirmed this donation for this purpose and declared it *legal* and *valid*.

(Sec. 4, act February 11, 1857.

I claim that the county of Wayne caused Wood to re-convey those lands, (see conveyance,) and in order to make the donation effectuate the object, afterwards, on the 19th November, 1858, and after the legislature had made this donation for this purpose "legal and valid," did by contract of that date, (see contract) agree to appropriate, apply, devote, and sell these lands to Vanduser, Smith & Co., for and as a consideration and in aid of the construction of a railroad across said county and on westward to Mt. Vernon; I claim that this contract was assigned to, and accepted by the Mt. Vernon Railroad Company, (see assignment,) I claim that by the general swamp act of February 14, 1859, Wayne county was empowered to sell these lands and to dispose of the proceeds as might be deemed best in the discretion of the county court; and I claim that the county court did deem it best to mortgage these lands. and did execute the mortgage sued on, in order to raise money thereby, to

enable the Mt. Vernon Railroad Company, as such assignee, to construct the said line of railroad across said county as provided in, and by said contract with Vanduser, Smith & Co.; and so I finally claim all these acts, conveyances, contracts, and mortgage, done, had, and made for the object, and with view and intention to aid and procure the construction of said railroad in and across the county, was, and is authorized by the several statutes referred to, and the use of the lands to constitute a mortgage security, and the appropriation of the proceeds or money they realized to the building of this line of road, as provided and made in and by said contract and mortgage, and the Hersey contract, was the use of the same for a necessary and laudable purpose and object, and in a "legitimate manner;" and is all therefore within appellant's concession and admission.

The power of sale being thus conceded by appellant we submit that the familiar principle of law is applicable, viz: when power is conferred to accomplish a certain object, end, or purpose, any and all necessary, proper and appropriate means to accomplish it, are included in the grant of power.

A power, therefore, to sell these lands to raise money to aid in building a railroad, and the power to donate these lands to aid in the construction of a railroad, both include the power of a conveyance of them in trust, and of mortgaging them, when one or both of these become a proper and appropriate means, and especially when this may be the only mode of making the value of these lands available to accomplish that purpose, viz: the rais-

ing of money for the construction of the road. Lands will not build railroads; money alone can be relied on for that purpose. This is the universal observation and experience of men. Lands granted by the States and United States, have invariably been mortgaged first to raise money, and afterwards sold to pay the loan, after being enhanced in value by the construction of the road. So it was done in this case. The power to sell includes the power to mortgage; and even a lease, included in the power to sell, would be sustained, if it should appear as an appropriate means of accomplishing the object for which the sale was intended.

These acts of the Legislature are of that class and character denominated enabling, and by all the canons of interpretation should be liberally construed to effectuate the object sought. When a power is provisional in its nature, it ought to be liberally coustrued so as to secure the beneficial execution of its powers, and no construction should be allowed which defeats or impafrs its avowed objects.

(1 Story Com. on Const., 411, 412.
Chisolm *vs.* Georgia, 2 Dallas, 419, 2 Cond. R. 635,552
McCulloch *vs.* Maryland, 4 Wheat., 316.)

Hence, if Wayne county was authorized by law, as appellant admit it was, to sell or donate its swamp lands to aid in the construction of a railroad, it certainly was authorized to convey these lands for the same purpose to a trustee by deeds of mortgage and trust. The greater power includes the less.

(1 Story's Com. on Const., 412, 413.
Bas *vs.* Tingey, 4 Dall. 37, 1 Cond. R. 224.
McCulloch *vs.* Maryland, 4 Wheat., 316.
United States *vs.* Fisher, 2 Cranch, 358.
The Federalist, No. 33, No. 44,
Middleton *vs.* Allegheny County, 3 Penn., 241.
Seybert *vs.* Pittsburg, 1 Wall. 272.
Rogers *vs.* Burlington, 3 Wall. 654.)

Again, appellant's *third* objection is that the appellees, having alledged in their bill a consolidation of the Mt. Vernon and Bellville and Fairfield Railroad Companies, must be held to make proof of that allegation to entitle them to a recovery; that having failed to make proof of a legal consolidation according to the statutes of Illinois, they cannot recover in this case.

1st. We answer this objection by showing that whether it is valid or not is immaterial, because there are other allegations of the bill, either of which is sufficient, if proved, to entitle the appellees to recover.

2d. Thus among these allegations are the following, viz: that the county of Wayne, being one of the counties through which said Mt. Vernon railroad was to run, was, by the 10th section of the Mt. Vernon railroad charter, authorized and empowered to aid in the construction of the same under the provisions of the 7, 8 and 9 sections.

3d. Another of these allegations is that the county of Wayne, being a county through which *a railroad* ran, or was projected to run, *connecting*, *joining* and *intersecting*

with the said Mt. Vernon railroad, and said Mt. Vernon Railroad Company having proposed to build and construct said road, thus intersecting with the Mt. Vernon railroad through the county of Wayne and to Mt. Vernon, the county court of Wayne county proceeded to, and did hold an election, and take a vote of the people under the authority of the 8th section of the charter of the Mt. Vernon railroad, whereat the people voted in favor of donating the swamp lands to any company that would build a railroad through Wayne county.

56. 4th. The bill further alleges that the two boards of directors of the Mount Vernon and the Bellville and Fairfield Railroad Companies met in joint session, and by mutual agreement the two roads were joined, connected, or intersected; and also said two roads, by such agreement, were then and there so consolidated as to make but one road running through said counties of Wayne and Jefferson; that by said joinder, connection, *or* consolidation of said two companies under said agreement the said companies were organized under the name of the Mount Vernon Railroad Company, and the said board of directors and said companies did then and there elect a joint board of directors for said connected, joined, intersected, or consolidated companies in the place and stead of the several boards of directors of said companies, * * * and by the said joinder, connection, or intersection, or consolidation of said two companies in the manner above set forth, under the said name of the Mount Vernon Railroad Company, the County Court of Wayne county, by virtue of the 7, 8, 9, and 10 sections of the Mount

Vernon railroad charter, was authorized to make such disposition of its swamp lands as it might deem best.

5th. Again, there is another set of allegations substantially the same as those last above.

Here are five different sets of allegations, and proof of either is sufficient to sustain the bill.

The purport of these allegations was that Wayne county had power to mortgage its swamp lands as it did in the deed to Seymour, inasmuch as the railroad, which was to be constructed by the aid of these lands, was one which came within the true meaning and intent of the act of February 15, 1855, sections 7, 8, 9, and 10. In other words, the road contemplated was one which might be connected, intersected, or joined to said Mount Vernon railroad, and whether it was technically consolidated with it or not was wholly immaterial.

The *proofs* fully sustain these allegations, and show that the road contemplated in the deeds of mortgage and trust to Seymour would in fact, when built, have run across Wayne county, and would have also connected with the Mount Vernon railroad at Mount Vernon, and was, therefore, prreisely such a road as this act contemplated. (See map.)

So, also, the contract for building this road, made by Wayne county with Vanduser, Smith & Co., shows by its terms that the road to be built would connect with the Mount Vernon railroad.

Still further proof of these allegations is derived

from the construction Wayne county put upon its powers under that charter, (see deed to Wood Record p. the mortgage to Seymour, (Record p.) and the deed of trust to Seymour, (Rec. p.) which disclose a series of public and official acts which would have been wholly unauthorized, unless the power we claim is to be found in the statutes. This construction was ratified by the Legislature of Illinois by confirming the legal validity of the deed of Wayne county to Wood, affirming that Wayne county, under the charter of the Mt. Vernon railroad, had power and authority to dispose of these swamp lands.

The county of Wayne, in the deeds to Seymour, now in controversy, in express terms, claims to have derived its power to dispose of these lands from the same provisions of the Mt. Vernon railroad charter, which have thus received a legislative construction and confirmation of the powers in question.

We offer as further proof of the sufficiency of the appellees allegations the admission and concession of the appellant in the argument formerly submitted, to the effect that the statutes herein cited conferred authority upon the counties to sell these lands and dispose of the proceeds.—(See admission in appellant's former argument, p. 22.)

And, finally, we answer this objection by referring to the allegation and by showing in the proofs to the court that Wayne county had the power to make the deeds sued on under three classes of statutes above

shown and referred to, even if we had failed to show any such power under the Mt. Vernon railroad charter. Thus we have demonstrated, in answer to the third objection, that if sustained it cannot prevent the appellees from maintaining this bill, inasmuch as it is supported by allegations and proofs other than those thus objected to.

The *fourth* objection of the appellant is, that the mortgage and deed of trust are not the acts and deeds of Wayne county, but only the acts and deeds of Samuel J. R. Wilson and Thomas M. Scott individually.

To this we answer, that this question is not now open to the appellant, because the answer of appellant was not sworn to. The statute of Illinois requires that a plea or answer, to put in issue the execution of the instrument sued on, must be sworn to by the party. See Statutes of Illinois, following: Sec. 14.—"But no person shall be permitted to deny, on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence, or set off, unless the person so denying the same, if defendant, verify his plea by affidavit; and if plaintiff shall file his or her affidavit, denying the execution of such instrument." Sec. 59: "In actions upon bonds, notes, and all other writings made assignable by law, in the name of the assignee, the plaintiff shall not be held bound to prove the the assignments or the signature of any assignee, unless the fact of assignment be put in issue by plea, verified by the affidavit of the defendant or some credible person, stating that he verily believes the facts stated in the

plea are true." And the practice of the Courts of the United States in Illinois is conformable to the State statute.

(See 1 vol. Scates Revised Stat. Ills., pp. 253, 254, sects. 14, 15.

Revised Stat. of Ills., 1845, p. 415, sec. 14, p. 421, sec. 59.)

But supposing that this objection were still open to the appellant, I should reply, *first*, that the Legislature of Illinois has construed a similar deed to be the deed not of the officers who executed it, but of the county.

This deed runs thus:

This indenture, &c., "by and between Daniel Turney, judge of the county court of Wayne county, Illinois; William Ellis, and Samuel Hooper, associate judges of said county court, of the first part, and Charles Wood of said Wayne county, of the second part, witnesseth," &c.

The concluding clause runs thus:

"In tertimony whereof, the said County Court of Wayne county aforesaid, parties of the first part hereto, have hereunto set their hands and private seals, the day and year aforesaid.

(Subscribed) D. TURNEY, County Judge, [SEAL]
WILLIAM ELLIS, Associate, [SEAL]
SAMUEL HOOPER, Associate, [SRAL]
Attest: [SEAL.] John TROUSDALE,
Clerk County Court, Wayne county, Illinois.

The deed of mortgage to Seymour runs thus:

"This indenture," &c., "between Samuel J. R. Wilson, judge, and Thomas M. Scott, associate judge of the County Court of the county of Wayne, in the State of Illinois, parties of the first part, and Isaac Seymour, of the city and State of New York, banker, trustee, as hereinafter mentioned, party of the second part, witnesseth."

The concluding clause runs thus:

"In witness whereof, the said parties of the first part have herewith set their hands and seals, and the seal of the said County Court, the day and year first above written."

[SEAL.] S. J. R. WILSON, *Co-Judge.* [S. L.]
THOMAS M. SCOTT, [S. L.]

As this deed is substantially the same form as the deed to Wood it must be held to be the deed of the county in accordance with the above cited statute.

In addition to this it was officially declared at the time of its execution to be the deed of the county by the official act of the County Court, as shown by the following order of the County Court of Wayne county.

"At a special term of the county court of Wayne county, begun and held at the court-house at Fairfield on the 20th day of April, 1859, (this being the date at which the deed was made and bears date,) present. S. J. R. Wilson, Judge; Thomas M. Scott, Associate; T. W. Barn-

hill, Clerk. And now, on this day *the court* executed to Isaac Seymour, of the city of New York, a deed of trust to certain swamp and overflowed lands lying in said Wayne county. The conditions and provisions of said trust deed will more fully appear by reference to said trust deed, entered of record in the Recorder's office of said county, in mortgage book B, pp. 330-341; and also executed a mortgage on the same lands to the said Isaac Seymour, as collateral security, to enable the Mt. Vernon Railroad Company to procure money to build a railroad through Wayne, from the eastern boundary of said Wayne county, to Mt. Vernon, in Jefferson county; and which mortgage is referred to and is recorded in Recorder's office of said Wayne county on mortgage book B, pp. 341, 359; and it is ordered by the court that Samuel J. R. Wilson be, and he is hereby, appointed a commissioner to act as the attorney of said Isaac Seymour, trustee as aforesaid, in the said county of Wayne, State of Illinois."

Subsequently, on the 27th of April, 1859, seven days after the date of said mortgage, the county of Wayne made a separate contract with the Mt. Vernon Railroad Company and Ira Hersey, trustee, wherein it is recited that the deeds of mortgage and trust to Isaac Seymour as trustee, as above, were the deeds of Wayne county, and under this contract, Wayne county actually received $400,000 of the bonds of the Mt. Vernon Railroad Company, secured by said mortgage deed to Seymour, in fulfillment of the trusts of that deed.

The County Court of Wayne again *recognized* the

Seymour mortgage, and the contract to deposit its half of the bonds with Hersey, *as the mortgage and contract* of the *county*, by an *order* of the *County Court* entered on the 14th day of December, 1859, for a change of the custody of the $400,000 bonds belonging to Wayne county.

This *order* of the *court* shows that the County Court understood that the deeds of mortgage and trust made to Seymour were the acts and deeds of the county, and that the Mount Vernon railroad bonds deposited with Hersey were the property of the county. This construction and understanding of the statutes, and of the deeds and contracts made under them, ought to have weight in ascertaining their meaning.

(James *et al.*, *vs.* The City of Milwaukee, 16 Wall. R. 159.

Shall Wayne county be heard by this Court in its attempt to repudiate the act of its county court (its lawfully authorized agents) when we have proved that these mortgages were executed by these agents under authority of the law; $400,000 dollars of these mortgage bonds have been received by the county and appropriated to its own use, a part of which the county sold to the appellees, or their assignors—the proceeds whereof are still in the county treasury; I trace the custody and subsequent disposition of these bonds to the complainants.

(See contract to deposit these bonds with Hersey. Casey's order to deliver bonds. Hersey's receipt for bonds

Request of Mt. Vernon Railroad to change custody of bonds.

Order of Wayne county court to change custody of bonds.

Receipt of S. J. R. Wilson, county judge, for bonds

Receipt of C. W. Lewis for bonds of Wilson.

As to the disposal of these bonds by the county, see letter of S. J. R. Wilson to C. W Lewis.

Letter of Lewis.

Endorsement of Wilson authorizing the location of certain lands with these bonds.

As to the identification of bonds now in suit, see supra page of these points.

The *fifth* objection of the appellant is, that Wayne county had no power to make this mortgage and deed of trust, and it takes the following grounds, viz:

1st. The termini and entire line of the Mount Vernon railroad are so located, both by its charter and actual survey, that neither could by any physical posibility touch Wayne county, and the aid given in the mortgage and deed of trust sued on was given to the Mount Vernon Railroad Company for the construction of its own road, which was not authorized by any of the statutes of Illinois referred to.

(See objections in appellant's former argument, pp. 2, 4, 21.)

2d. That the power to donate does not include the power to mortgage.

(See appellant's former argument, pp. 22-23.)

To these objections I answer that it is true that no part of the line, and neither of the termini of the Mount Vernon railroad, ran into or touched Wayne, (see explanatory map herewith furnished;) but I insist that the eighth and tenth sections of the Mount Vernon railroad charter gave authority to Wayne county to "aid in the construction" *of the Mount Vernon Railroad* and of *any other* road running through Wayne county with which it "may be connected, intersected, or joined."

As to the power of the county to *donate* these swamp lands—and whether the power to donate includes the power to mortgage—I submit that the power was expressly conferred to appropriate said lands to aid in this railroad enterprise, "by sale or *mortgage*, *one* or *both*, of the swamp or overflowed lands of said county;" or Wayne county "may make such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they deem best for the public interest of said county."

The chief object expressed in these sections is to authorize "aid" to be given in these lands towards "the construction and maintenance of said railroad," and that might be done in the mode or manner, or, in other words, by the ways and means before prescribed, *i. e.* "by *sale* or *mortgage*, *one or both*," or "they, (the counties) *may make such other disposition*" of said lands by way of "aid" "as they deem best."

The object, then, in the power given is to "aid in

the construction and maintenance" of a railroad; the means prescribed are "by sale or mortgage, one or both," or "such *other* disposition as they deem best."

The county Court of Wayne acted under powers given by these sections, together with the 9th section of that charter, and submitted as the *mode* and *plan* of giving such aid a proposition to *donate* these lands to any company to build a railroad through that county, and conveyed these lands to Charles Wood to aid the Bellville and Fairfield and Alton and Mount Carmel and New Albany Railroad Companies to build it through Wayne. The Legislature confirmed this deed, and this plan and this mode of disposing of these lands by the 4th section of the act of February 11, 1857, and by the 5th section expressly added that any county through which the line of the St. Louis and Louisville railroad runs "may donate" its swamp lands or the "proceeds" of them to said company "*on such terms as the County Court of such counties may prescribe.*"

The County Court made such a donation, and prescribed such terms by its contract with Vanduser, Smith & Co., of November 19, 1858, by which it appropriated these lands to the construction of so much of the line as lies between the eastern border of Wayne, westward, across it and on to Mount Vernon.

(See for plan and conveyance. See act of February 11, 1857. See contract with Vanduser, Smith & Co.)

And it must not be forgotten nor overlooked by this

court that the conveyance of these lands to Seymour as trustee, in the mortgage and trust sued on, were so conveyed, to secure the bonds of the Mt. Vernon Railroad Company, for the purpose of raising money ty build a railroad with; and that this railroad thus to be built, was to be located in and run across Wayne county; and also to connect with the Mt. Vernon railroad at Mt. Vernon; and on a line identical with the charter-line of the St. Louis and Louisville railroad; and that the Mt. Vernon railroad Company, as a corporation, acted in the double capacity, first, to construct its own charter-line, and secondly, as contractors under the Vanduser, Smith & Co.'s building contract with Wayne county, to build under that contract in and across Wayne county.

And it is further to be noticed, that the power to appropriate these lands, or the "proceeds" thereof, includes the right to obtain these "proceeds" by *mortgage* as well as by *sale*, and both these powers are clearly within the power to "*donate*," which was given in express terms by the last act above mentioned.

But still more ample authority is conferred by the said 8th section of the Mt. Vernon railroad charter, and the 5th section of the act of February 11, 1857, taken in connection with each other, which provides that Wayne county, amongst others, may make such *other disposition* of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as they *deem best* for the *public interest of said* county." And the said 5th section of the last act provides in making such "do-

nations," the same may be done, "*on such terms* as the county court of such counties *may prescribe*."

Thus we see that all the contracts, conveyances, deeds of mortgage and trust, forming a series of acts in *pari materia*, calculated and tending as appropriate means to accomplish the object designed by the acts of the Legislature, viz: The giving of aid in the construction of railroads, are expressly included within the terms of these acts.

If it be insisted upon by the appellant that Wayne county had no right to contract for the building of a railroad through it, I reply that the foregoing act, which gave to the county the power of appropriating the swamp lands, or the proceeds thereof to aid in the construction of a railroad, conferred upon the county by necessary implication, the authority to provide for the building of a railroad by the same contract by which such lands were appropriated. The making of a contract to build, either by the county, or on its behalf, was a necessary step in any proceeding toward the application of the swamp lands, or of the proceeds thereof, towards the due execution and performance thereof. And it would have been a misuse of its power had the county made any disposition of these lands or their proceeds, without securing, in and by a contract, the construction of the line of road, in aid of which they were given.

It has been objected by appellant that the power to appropriate these swamp lands by Wayne county to aid in constructing any railroad, could not be lawfully exer-

cised, unless said county had previously submitted to the popular vote "a plan or plans proposed by them for aiding in constructing of said road," and appellant denies that the plan which was submitted was such as is required under the Mt. Vernon railroad charter.

I deny both the premises and conclusions. There were *two* sources of authority under which Wayne county could appropriate these lands or their proceeds without taking any popular vote:

First. The act of the Legislature of the 11th February, 1857, empowers Wayne county to donate its swamp lands, or their proceeds, to aid in the construction of a railroad upon the same line as that described in the mortgage and deeds of trust to Seymour, although the name of the railroad company had been changed by that act.

Second. Under the general Swamp Land Act of the Legislature, February 14, 1859, general power is given to all counties, not only to "sell and *dispose* of" these lands for cash, or credit, or "for *such securities* as the county court may think proper to *accept*;" but it also places the proceeds "subject to the order of the county jndge, for such *purposes* as the county court may direct.

Third. That the county court, if it be deemed to have derived its powers solely under the provisions of the Mt. Vernon railroad charter, has fully complied therewith in preparing in print, and submitting to the voters of Wayne county a proposition which contained "a brief clear, distinct idea of the plan proposed by them, for aiding in constructing the said road."

For proof of this proposition we refer to the recitals of these facts in the deeds of the county to Seymour. As I have before said, these recitals cannot be disputed or denied by the county in a suit in equity brought upon said deeds.

The plan which is proved to have been submitted, was that of *donating* these lands, in aid of constructing a railroad, in pursuance of a long settled policy of the county and of the State. That plan was sufficiently clear, definite and distinct. I do not understand the word "donate," meant to give away or throw away these lands as a gratuity; but it means that the lands, or the proceeds thereof, to the extent of their enrire value, might be applied or appropriated to aid in the construction of a proposed railroad for the direct and indirect benefit of Wayne county.

This included the right and the power to appropriate any interest in said lands less than the entire estate in fee simple; the mortgage and trust deeds made upon the lands, therefore, conveyed to Seymour, as trustee, an interest less than that which the county might have transferred if it had seen fit to exercise in its fullest extent the power conferred upon it by the statute.

As the statute itself does not specify the nature and character of the mode or plan of aiding in the construction of a railroad which was to be submitted to the popular vote, it is a sufficient compliance with the statute to submit any definite and intelligible mode or plan of applying said swamp lands for that purpose. It was not

necessary to submit to vote any plan for locating or constructing a railraad, for that object was answered by the statute itself. But the power to "donate," as it included all modes of disposing of these lands, by which such donation could be carried into effect, it became wholly unnecessary for the county to submit to popular vete any details of the contracts and conveyances by which such donation would be consummated and made effectual.

It is not alleged that in submitting the said plan to popular vote any fraud or deception has been committed by the officers of the County Court upon the people of the county, therefore the case cited, by appellee, of the Supervisors of Fulton county *vs.* Mississippi and Wabash Railroad Company, 21 Ill. R., 373, has no bearing on this case.

The case of Marsh *vs.* Fulton county, 10 Wall. 686, cited by appellant has no bearing upon the case now in hearing, though it is authority to show that bonds made by Fulton county in aid of a railroad without authority of law were invalid. In that case the county was authorized to issue its bonds to a certain designated corporation, and afterwards issued them, not to that corporation, but to other and different and distinct corporations.

In the case now in hearing Wayne county issued no bonds, but mortgaged its lands to secure bonds issued by the Mt. Vernon Railroad Company, and the validity of these bonds is not questioned or denied.

X.

I present to the court a map of the railroad lines mentioned in the record to illustrate the argument herewith submitted, and also the lithograph map submitted with the record, showing the line of survey and location of the Mount Vernon railroad and of the Bellville and Fairfield railroad, now called the St. Louis and Louisville, as surveyed and located by the Mount Vernon Railroad Company as assignee of the *two building* contracts, one of which was that of Vanduser, Smith & Co. with Wayne county, for the construction of the railroad in said Wayne county.

WALTER B. SCATES,

Counsel for Appellees.

Argument of Appellee's Counsel

IN THE CASE OF

JOHN W. KENNICOTT, et al.,

ADS.,

THE BOARD OF SUPERVISORS OF WAYNE COUNTY, ILLINOIS.

Appeal from the Circuit Court of the United States, for the Southern District of Illinois.

The appellee's show by their bill, that each of them bought, in good faith, and for a valuable consideration, and in open market, and still hold, in like good faith, a considerable amount of the construction bonds of the Mount Vernon R. R. Co., *negotiable by delivery*. That Wayne county conveyed by deed of mortgage, and by deed of trust, about one hundred thousand acres of her swamp and overflowed lands—to Isaac Seymour, of the city of New York, to secure the payment of the principal and interest of ($800,000) of said bonds, according to their terms, which are copied into the mortgage and deed of trust. That Seymour died before the commencement of this suit, without having executed the trust, or foreclosed the mortgage; and that before the commencement of this suit, the conditions of these conveyances were forfeited by a failure to pay the accrued interest on the bonds amounting to more than one years interest upon the whole $800,000; and that in fact, no part of the interest has ever been paid hitherto.

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may express their will on said proposition, by writing "yea" and "nay" on a separate ticket. The proposition or plan having the highest number of votes shall be adopted by the County Court, *Provided*, a majority of all the votes given in favor of the several propositions or plans so submitted in aid of said road shall be a majority of all the votes given at said election."

"Sec. 10. Any county through which said road *may* run and every county through which any other railroad *may* run, with which this road *may* be joined, connected or intersected, *may*, and are hereby authorized and empowered to aid in the construction of the same, or of such other road with which it may so connect; and for this purpose the provisions of the seventh, eighth, and ninth sections of this act shall extend, include, and be applicable to every such county, and every such railroad."

The language of this 10th sect. gramatically and legally construed,—is in the potential mood, and alike in the present and future tense of that mood; the present tense, "may be joined," means now joined, already joined; in the future tense it means capable of being joined at a future time. The Legislature used it in this latter sense; and to uphold and sustain the deliberate and solemn transaction of the defendant, the court will construe it as in the future tense. The lines by the charters both run to Mount Vernon—they are capable of being joined at that point, under powers given in both charters to connect with other roads; and one of them runs through Wayne county, therefore, say the Legislature that Wayne county "may," that is—now has the power "*to aid in the*

construction" of either road, or both, by donation of her swamp lands.

A railroad may have been built through Wayne county, and connected with the Mount Vernon railroad, this is in the present tense; or a railroad authorized to be built through Wayne county, and authorized to connect with the Mount Vernon railroad at Mount Vernon, is in the future tense, and eqnally within the meaning of that section entitled to receive *aid* by Wayne county in its construction, by a donation of her swamp lands.

The words *may* run, do not mean, exclusively, be operated when built, but they mean equally to be *located* for the *purpose of building*. And it is in this sense that the section uses the words "may run" and "may be joined," &c, and the other phrase in the same section, "are hereby authorized and empowered to *aid* in the *construction* of the same," are in the present tense, and the moment the charters took effect, on the 15th of February, 1855, this power was conferred upon Wayne county, dependent only upon one condition, *i. e.*, that the people should consent to it, at an election to be held. That consent has been given.

Such a construction of the language of that section appears to us to be entirely grammatical, legal, consistent, reasonable and conclusive.

It gives Wayne county, upon an affirmative vote, control of her swamp lands for this purpose, and by doing so, enables her to aid in the construction of a R. R. through her limits, promptly, efficiently and decisively.

And although there was no railroad built, and in operation in the one county or the other, and although no connection was *actually* made, nevertheless it enables her to *aid in constructing one*, which, *when* built, *can form the actual* connection.

It empowers, induces and accellerates the actual construction and connection, by her *furnishing in advance* part of the means of building a railroad.

Again: suppose a railroad to have been built through Wayne county, through the aid of her swamp lands—a road located with a view, and having capacity by extension, of being connected with the Mount Vernon railroad; would it not in the language of the 10th section be such a road as *might* be extended and connected with the Mount Vernon railroad?

The opposite construction would defeat the *policy* and *object* of the act. The policy of the act was to encourage and enable the counties to give *aid* in the *construction* of such railroads as would subserve the interests of their local trade and travel; and to enable them to aid such enterprises and improvements, by placing a valuable fund in their possession for that purpose. But how could this end be accomplished, if this fund was withheld from use, for that purpose; or until after the completion of the road? Such a construction would leave the county in the same situation she was in before the passage of the act, with no other alternative than to pledge her credit and incur a public debt, as a means of securing the construction of a railroad. But by our

construction she has the *present means*, without a debt, in the 100,000 acres of her swamp lands, then lying idle and unproductive, and worth, without a railroad, from one to three dollars per acre. She might have sold it uninhanced by the improvement, and given the proceeds towards making it. But we think she has acted wisely, in aiding by mortgage, to raise the means, and give the aid in building, and thereby enhancing in value of the land and increasing the amount of the aid.

I will not argue the question that the power by a donation by conveyance of the land direct, or by sale and donation of the proceeds includes the power to mortgage them.

The whole contains all its parts—the major includes the minor.

The meaning and language of the 10th section are: "authorized and empowered to *aid* in the *construction* of the same," *i. e.*, of a road in either county. This must evidently authorize the "*aid*" to be given in advance—before the road is constructed—may give the aid to help to build it. Neither does the phraseology require that the joinder, connection or intersection of two such roads should have been first made. But it only requires that the lines of location of two such roads shall be such that when built they "may be joined, connected or intersected."

The Bellville and Fairfield railroad was so chartered as to run through both counties, Jefferson and Wayne,

of Wayne county, westward through Fairfield and the whole extent of that county to Mount Vernon; Record p. and Jefferson county entered into another written contract with the same company on the 20th of October, 1858, for the construction of the Mt. Vernon railroad from Mt. Vernon westward to Ashley, in Washington county, on the Illinois Central R. R. Record pp. These contracts specify how these roads should be built, and the compensation, in lands, to be paid by the respective counties therefor, and were assigned on the 12 of September, 1859, with the consent of both counties to the Mt. Vernon R. R. Co. agreeably to an order of the board of directors of the Co. (Record pp. .) And it should be noted that Wayne county stipulated in the contract with her, that she would furnish the right of way for the road, which was thus to be built through its limits, and cause to be transferred to Vanduser, Smith & Co., the charter and franchises of the Bellville and Fairfield, or rather the St. Louis and Louisville R. R. Co.; and that any delay occasioned to Vanduser, Smith & Co., by a failure on the part of Wayne county to furnish the charter or right of way, should operate as an extension of the time for completing the road. Record p.

Here, then, we have a connection in another form—*a connection by contract*, of the Mt. Vernon R. R., at Mt. Vernon, with a railroad through Wayne county, to be built by the procurement and contract of Wayne county from east to west, and on to Mt. Vernon. Record pp. This court has already decided, 16 Wall 452, that this was a compliance with the condition upon which the

county would be authorized to mortgage her swamp lands in aid of the construction of a road through its limits.

The 8th section authorizes a subscription for stock to be paid for by lands, or by sale or mortgage, as it *may deem best;* or any county "may make such other disposition of swamp and overflowed lands in aid of the construction and maintenance of said railroad, as they deem best for the public interest of said county." The policy and design of the Legislature are, as I have said before, to encourage and empower counties to aid in getting a railroad through, with their swamp lands, and after prescribing two modes or plans of doing so, they then add a general power to "make such other disposition" "as they deem best," leaving full discretion as to mode, time, terms, &c. &c., to them.

It is true that the powers of county municipalities or courts exist in part by legislative grant; but it is equally true that in other respects many of their powers are derived from the common law, adopted in Illinois, and by constitutional grant. The constitution and common law vest in them power to make, repair, and establish highways, roads, bridges and ferries, and a variety of other municipal powers. Not only is this true, but these Courts rest upon as solid a foundation as the Legislature, the Executive and the Supreme Judiciary of the State themselves. The New England towns, and other local municipal governments throughaut all the colonies, laid deep the foundations of the representative form of government under which we now so hapily and prosper-

ously live, and they did so in the exercise of municipal powers over like local interests. All of these public agencies, as parts of the general machinery of government, are created by the constitution itself. The municipality of a county is not therefore created by the statutes alone; though some, even most of its powers, may be derived from such sources. Such a municipality is at the same time legislative, executive, judicial and administrative. It may and does perform all these functions. It is, in the language of Chancellor Kent, "an auxiliary agent of the State Government"—being a local republic—exercising and having the right to exercise the functions of local government." De Toqueville remarks with surprise that "these municipalities, bringing home the right and function of local government to every local community in America, constitute the life blood of American democracy."

Passing from these general considerations, let us next enquire concerning the appropriate and usual objects involving the jurisdiction of county municipalities. Among these, confessedly in England and every where in the United States are artificial facilities for the internal transit of persons and things. Without these facilities society could hardly be held to exist. They constitute one of the leading distinctions between civilized and savage communities. In fact, the march of civilization, in every age and part of the world, has been marked by the augmentation and improvement of such facilities. The familiar histories of Greece and Rome in ancient times, and of England and France in modern times, demonstrate

this truth; so the histories of Mexico and Peru in the new world. The absence of such facilities in North America testified to its savage condition. Such, indeed, are the veins and arteries of the body politic, or the social union. They are, in a material sense, the bonds of unity in the form of public roads; they are necessary to enable the Judge to travel on his circuit—the members of the jury to attend the Court in the proceedings in which they are to take a part—the militia-men to attend the stated muster—and the farmer, merchant, and mechanic to convey their products and merchandise to market. As one of the necessary agencies of civilized society, therefore, an inherent right to open, construct and maintain public roads appertains to every county municipality; and the statute undertaking to confer such a right or jurisdiction, only verifies and confirms it; and the *right* in this fundamental sense is as available and undeniable to construct a railroad as a turnpike, where the means are at the disposal of the county. If the right of way can be procured without condemnation, no charter would be necessary either to the county or to individuals to construct a railroad. In the course of time it may and probably will eventuate that railroads, through the agency of municipalities, or the association of the inhabitants, and capital of neighborhoods, will be so constructed in the plain regions of Illinois and other States, as to be adapted to the wheels and use of ordinary wagons, and so supercede, to a considerable extent, earth, plank, and turnpike roads. Thus I arrive at the right and the power of a county, as a municipal corporation, to contract

for the construction of any public road called for by its local wants, or to have it constructed through its own agents.

People, *ex rel.*, Hoes *et al.*, *vs.* Canal Trustees, 1 Gil. 402

"The burden of opening and repairing roads, and of building and repairing bridges, is, by the common law upon the counties, &c."

But if this were not true, still the contract was authorized and validated by the 7th, 8th, 9th and 10th sections of the Mt. Vernon R. R. charter, and the charter and amended charter of the St. Louis and Louisville R. R., and the general statutes of the State. The contaact of Wayne County to have the road built, as we have seen, contemplated the connection of a railroad to be built and run through Wayne County with the Mt. Vernon R. R., and upon such connection,, the sections, charter and laws above referred to "authorized" and empowered Wayne County "to sell, mortgage," or "otherwise dispose of her swamp lands in aid of the construction" of the former or both roads. Unquestionably the power here clearly given "to sell, mortgage," or "otherwise dispose of their swamp lands in aid" of such construction, carries with it, as incidental thereto, the power to stipulate the terms of disposition; and the "plan," or "mode" adopted by the deeds sued on, and the building contract are clearly within the "plan" or "mode" voted on and adopted by the people. The power to dispose of and the power to fix the terms of such disposal, are complements of the same general power given by the vote;

hence the power to dispose of by donation "as" a *bonus*. If the one power exists, the other by irresistible implication also exists. And this Court has so decided in this case. 16 Wall., 452. The opposite view would leave the county with no other power than to make an absolute gift of her lands.

Again, the power to convey any real estate belonging to a county was given by general statutes hitherto in force, and still in force in this State. In early times, in this State, the municipal powers of counties were exercised by a County Commissioner's Court; in 1848 the Constitution changed the name to "County Court"; subsequent laws have authorized the people where they choose to adopt township organization, and in such counties the municipal authority is divided between Town Boards and a Board of Supervisors representing the whole county. Between the time of making the deeds and contracts in evidence and the bringing of this suit, Wayne county adopted township organization: hence the suit is against the Board of Supervisors representing the county.

Prior to and ever since 1845, the following general laws have been in force, and still are, to-wit: "The County Commissioners of the several counties of this State, are hereby authorized to execute and deliver all deeds, grants, conveyances and bonds which may become necessary in selling and transferring real estate belonging to their respective counties; and such deeds, grants, conveyances and bonds, if made without fraud or collu-

sion, shall be obligatory upon the counties to all intents and purposes." (Rev. Stat. 1845, p. 102, Sec. 26—Scates' Stat., p. 958—Gross' Stat., p. 109, Sec. 40.)

"The County (Commissioners) Court may, by their order, to be entered on their minutes, appoint a Commissioner to sell and dispose of any real estate of their county, and the deed of such Commissioner, under his proper hand and seal, for and in behalf of such County, duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey to the purchaser or purchasers all the right, title, interest, and estate whatever which the County may then have in and to the premises so to be conveyed." (Rev. Stat. 1845, p. 132, Sec. 15—Scates' Stat. p. 297—Gross' Stat. p. 159, Sec. 3.)

"The County (Commissioners) Court may appoint an agent or agents to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents, duly executed for and on behalf of such county, shall be valid and effectual to bind such county, to all intents and purposes." (Rev. Stat. 1845, p. 132, Sec. 17—Scates' Stat. p. 297—Gross' Stat. p. 160, Sec. 5.)

Again, a general act was passed February 14th, 1859, giving County Courts general power to sell and dispose of swamp lands and the proceeds of them, viz:

"Sec. 1. The County Courts of the several counties of this State are hereby authorized and empowered to sell and dispose of at public or private sale, for cash or credit, or for such securities as the County Court may

think proper to accept, all or any of the swamp or overflowed lands lying within the respective counties, including also all and every interest, claim, demand and gift granted to them by the State of Illinois, arising under the Act of Congress passed September 28, 1852, and Acts amendatory thereof.

Sec. 2. Wherever a sale has been made or hereafter shall be made by the County Court of any of said lands, and upon delivery by any purchaser or purchasers, to the County Court, of such securities as the County Court may think proper to take, the purchaser or purchasers thereof shall be entitled to a conveyance of the land so purchased, executed by the Clerk of the County Court, under the seal of the Court, in fee simple thereof.

Sec. 3. The proceeds arising from any sale or sales shall be subject to the order of the County Judge, for such purposes as the County Court may direct.

Sec. 4. This Act shall apply to all the counties of this State, having special laws in reference to the sale of swamp, under which they may act, without reference to such special acts, and in counties where township organization has been adopted the Board of Supervisors are authorized to carry out the provisions of this Act. But where County Courts in counties having township organization, are authorized by any special laws to sell and dispose of their swamp lands, such County Courts are clothed with all the power and authority necessary to carry out the provisions of this law; and nothing herein contained shall prevent any County Court or Board

exercise and enjoy all the powers, rights and privileges of appropriating and donating all the swamp and overflowed lands respectively belonging to said counties, for the purpose of aiding in the construction of the Bellville & Fairfield Railroad, or any other line of railroad which may pass through any of said counties, and be joined to and connected or intersected with the said Mt. Vernon Railroad, or which may be joined or connected and intersected with the said Bellville & Fairfield R. R., because of and by reason of said Mt. Vernon Railroad *being* joined to, connected and intersected with the said Bellville and Fairfield Railroad at or near Mt. Vernon as aforesaid. And whereas under the authority and by virtue of the provisions contained in the said 10th Section of the aforesaid Act to incorporate the Mt. Vernon Railroad, the County Court of Wayne county in said State of Illinois, for the purpose of aiding in the construction of the said Bellville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad, held a special term of said Court on the 13th of October, in the year of our Lord one thousand eight hundred and fifth-five, then and there passed an order that on Tuesday after the first Monday in November, 1855, an election should be held by the legal voters of Wayne county for the purpose of voting for or against donating the unsold swamp or overflowed lands of that county to any company that would build and complete in a reasonable time a railroad through and across the limits of said county from the East to the West side thereof, that is to say, from the town of Fairfield to the West line of said county on the route of the Bellville & Fairfield Railroad, and from Fairfield to the East line of said county along the route of the Alton,

Mt. Carmel and New Albany Railroad line as heretofore located and partly graded by the State of Illinois. And after due notice of said election had been given by the said County Court of Wayne County to the legal voters of said county, on Tuesday after the first Monday in Nov. 1855, an election was held throughout the said county of Wayne, "for" and "against" the donation of all the swamp and overflowed lands belonging to said county to be given and granted as a bounty and premium to any company that will construct and finish a railroad across said county as aforesaid, when at the said election there were eight hundred and thirty-one votes given in favor of and for said donation, and there were two hundred and fifty-eight votes given against said donation as appears from the canvasser's report and certificate of said election now on file in the Clerk's Office of the County Court of Wayne county. And whereas the Alton, Mt. Carmel and New Albany Railroad charter provides and authorizes said railroad shall be made from Jeffersonville in the State of Indiana opposite the city of Louisville in Kentucky, and shall run through New Albany and the Southern portion of the State of Indiana to Mt. Carmel in the State of Illinois, and thence through Albion in Edwards Co., and through the aforesaid town of Fairfield in Wayne Co., Illinois, and that part of said railroad from Mt. Carmel to Albion has heretofore been located and graded by the State of Illinois, and from Albion to Fairfield has heretofore been located and partly graded by said State: therefore the Alton, Mt. Carmel & New Albany line of railroad passing through the whole width of Edwards county on its route from Mt. Carmel to

Fairfield, will thereat be joined to and there connect and intersect with the Bellville & Fairfield Railroad by said conjunction, connection, intersection, of the Bellville & Fairfield Railroad with the Alton, Mt. Carmel & New Albany Railroad at or near the town of Fairfield, it will constitute, conclude and continue the *elongation*, *junction* and *extension* of the Mt. Vernon Railroad through and along the length of the Bellville & Fairfield Railroad, and thence from Fairfield to and through and along the length of the Alton, Mt. Carmel & New Albany Railroad, *thereby creating* and *constituting* an extension of the Mt. Vernon railroad, all the way from the town of Mt. Vernon to Jeffersonville opposite the city of Louisville, Kentucky, and *by reason of* and *through* the aforesaid *junction*, *connection* and *intersection* of the Alton, Mt. Carmel & New Albany Railroad with the Bellville & Fairfield Railroad, and through and along the line of the last mentioned railroad to the town of Mt. Vernon, thereby forming a complete junction, connection and intersection with the said Mt. Vernon Railroad, the county of Wayne becomes duly, legally and rightfully authorized and empowered by the provisions of the said Mt. Vernon Railroad charter to apply, appropriate, use and donate all the unsold swamp and overflowed lands belonging to said county for the use and purpose of *aiding* in the construction of the Bellville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad across the limits of said Wayne county. And whereas, furthermore the charter of said Alton, Mt. Carmel & New Albany Railroad Co. to construct a branch of said road to

Illinoistown opposite the city of St. Louis in Missouri, and long before the Legislature of Illinois had passed the "Mt. Carmel" and the "Bellville & Fairfield" Railroad charter, the Board of Directors of the Alton, Mt. Carmel & New Albany Railroad Co. had passed a resolution stating and fixing the location of the line of the said branch railroad, to run from Fairfield through the town of Mt. Vernon, Nashville and Bellville to Illinoistown opposite St. Louis; and for the reason and by and through the means of the aforesaid prior location of the said railroad through the aforesaid towns along the very same line and routes, and previous to the passage of the charter of the Mt. Vernon Railroad, and of the Bellville & Fairfield Railroad, and the most intimate and perfect junction, connection and intersection will be effected as well as the mutual elongation, extension, union and consolidation of the Mt. Vernon Railroad with the Bellville & Fairfield Railroad, and also with the Alton, Mt. Carmel & New Albany Railroad will be secured and thoroughly united with each other, thereby constituting one continuous air line railroad from Jeffersonville in Indiana to Illinoistown in Illinois, commonly designated the Louisville & St. Louis Air Line. And for all these reasons, and by virtue of the aforesaid junction, intersection, extension, consolidation and union of the Mt. Vernon Railroad with the Bellville & Fairfield Railroad, and also with the Alton, Mt. Carmel & New Albany Railroad, as hereinbefore described and set forth, the aforesaid county of Wayne is thoroughly entitled and lawfully authorized and empowered by and through the provisions of the said 10th Section of the Mt. Vernon Railroad charter to donate all the swamp and overflowed lands of

and belonging to the said county of Wayne for the purpose of aiding in the construction of the said Bellville & Fairfield Railroad, and of the Alton, Mt. Carmel & New Albany Railroad, running from West to East through and across the whole width of said Wayne county." * * * *

"Now, therefore, in consideration of the premises, the County Court of Wayne county, Illinois, at a special term of said Court held in the Court House at Fairfield, this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, pass and ordain an order of the Court, to make, execute, sign and seal and deliver the following Deed of Trust with the foregoing preamble hereunto annexed and made a part of said DEED explaining the conditions thereof and therein contained." * * * *

Witnesseth "that the party of the first part in consideration of the premises above recited and hereunto annexed, and exhibited on the foregoing twelve pages, and in pursuance of the authority vested in said Court by the aforesaid Act of the Legislature of Illinois entitled "An Act to incorporate the Mt. Vernon Railroad Co.," approved February 15th, in the year of our Lord one thousand eight hundred and fifty-five; and also in pursuance of the authority so vested in said County Court by virtue of and in accordance with a vote given by the legal voters of said Wayne county at an election held on the 6th day of November, in the year of our Lord one thousand eight hundred and fifth-five as heretofore set forth."

Upon these recitals of facts and laws under which the County Court claimed to act, and made this deed to Charles Wood to aid in building a railroad line through Wayne County under the Mt. Vernon Railroad charter, I will first specially call the attention of the Court to the construction put upon the 7th, 8th, 9th and 10th Sections of that charter by Wayne county itself in these recitals on pages . By these recitals the county derives the power to make the donations from these sections, without any connection in fact of the two roads—using and understanding the language of the 10th Section "may be joined," etc., in the future tense potential mood—capable of—so located as to be joined—as is done in the two charters at Mt. Vernon, and as I have in my argument, construed the true intent and meaning to be.

This view of the meaning put upon this charter by the county, and these admissions in the recitals of the *then existence* of all the facts under that charter, to raise and communicate its powers to Wayne county is recognized and confirmed. The Legislature expressly recognized and confirmed this deed and donation and all the facts recited in it, by the act to amend the charter of the Bellville and Fairfield Railroad, passed on the 14th of Feb. 1857, and which I will set forth in my argument.

I will here call the Court's attention to another fact. After this remedial, enabling and amendatory act sanctioning and confirming all that the county had done to encourage and aid the Bellville and Fairfield and Alton

Mt. Carmel and New Albany Railroad Companies to proceed to and with the construction through its limits, and finding no steps taken by these roads towards building it for these lands in the condition the title then stood in Charles Wood in trust, the Court directed Mr. Wood to reconvey them to the county, which he did on the 22nd of August, 1857, (see Record pp. ,) so that the county could convey, mortgage, or use them in some other more available way that would afford the "aid" it was empowered to give. When so re-conveyed to the county, the trust remained, the county succeeded as trustee and became liable and undertook as trustee to execute the trust designated by the law and the votes of the citizens. As the corporate authorities of the Bellville and Fairfield Railroad Co. did not proceed to the construction, the County Court did so for them, or for the voters of the county; and accordingly to carry out the trust and make a road through the county, it entered into the building contract with Vanduser, Smith & Co., of 19th November, 1858, and it covenanted therein to procure the use of the St. Louis and Louisville Railroad charter, to cover and aid in building and operating it. The same contractors or railroad builders, Vanduser, Smith & Co. having previously taken a contract to build the Mt. Vernon Railroad, and having acquired the control of that charter by becoming its stockholders and directors, they assigned the building contracts to the Mt. Vernon Railroad Co., and to raise means to prosecute the construction under both contracts and in both counties, adopted the policy, on consulting with Wayne county, of issuing the construction bonds of the Mt.

Vernon Railroad for $800,000, and secured them by a mortgage of all its property and franchises.

Wayne county had bargained to give $500,000 for building the road through it to Mt. Vernon, payable in these swamp lands at $5 per acre, as the work progressed. As a means of raising money on the swamp lands without absolute sales to pay as the work progressed, and by preserving them until their value could be enhanced by a finished road, Wayne county consulted and agreed with the Mt. Vernon Railroad Co. that the bonds should be divided and the proceeds applied to the work or road lying in the respective counties, and on her part she would *add* as a further security for the payment of the Bonds, a mortgage and Deed of Trust of her swamp lands. By this arrangement the value and saleability of the Bonds would be enhanced in the market, and the swamp lands could be reserved from sale until the completion of the roads. This arrangement was carried out by the execution of the deeds sued on, and the contract to deposit $400,000 of the bonds with Ira Hersey for the county, and the trust deed to Seymour preserved the trust of these lands created by the deed to Wood. Thus the county vigorously pursued and took the steps deemed necessary to secure the building of so much of the St. Louis and Louisville railroad line, as lies between Mt. Vernon and the eastern boundary of Wayne, and to execute and fulfill the trusts of the Wood deed.

This evidence is full and direct to the fact of a connection having then been made between these roads.

I now call the Court's attention to the provisions of the St. Louis & Louisville railroad charter, and which fully confirms the creation and objects of these trusts. On the same day the Mt. Vernon railroad charter was passed, that of the Bellville and Fairfield railroad also passed. It made Henry Godeking and 17 others by name the corporators, and also constituted them the first Board of Directors, and invested them with all the powers of the corporation until their successors should be elected and qualified. Section 6.

By Section 14, the city of Bellville, and the counties of St. Clair, Washington, Jefferson and Wayne were authorized to subscribe for stock, and to "hypothecate mortgages and other evidences of indebtedness due and owing to them, and arising from the sales of said swamp lands." * * * * * *
but not "until a majority of the legal voters of said counties have, at some general or special election, voted in favor of investing said swamp lands or the proceeds of the sales of the said swamp lands of their respective county or counties, in said railroad or roads."

SEC. 16. Said Company shall have full power to cross intersect, join and unite its road with any other railroad now or hereafter to be legally chartered, at any point on, or at either terminus of said line of said railroad authorized to be constructed under the provisions fo this Act, with the necessary turnouts, and siding switches, and other conveniences, in furtherance of the objects of its connections, upon such terms as may be mutually agreed upon by the respective parties.

On the 11th of February, 1857, this charter was amended. The name was changed to "The St. Louis & Louisville Railroad Company," and the line extended from Illinoistown opposite St. Louis, to Jeffersonville opposite Louisville, by Bellville, Nashville, Mt. Vernon, Farifield and Mt. Carmel. Amongst other provisions are the following:

"SEC. 4. The donation of lands which has heretofore been made by the county of Jefferson to the Mt. Vernon Railroad Company is hereby confirmed." * * *
"The vote heretofore taken in Wayne county to donate the swamp lands of said county to the Bellville and Fairfield Railroad Company, and the Alton, Mt. Carmel & New Albany Railroad Company, and the conveyance of said land by the County Court of said county, in trust for the use of said last mentioned Railroad Companies, be and the same are hereby declared to be legal and valid."

"SEC. 5. Each county through which said railroad runs, may donate the swamp lands of such county, or the proceeds thereof where the lands have been sold, to the St. Louis & Louisville Railroad Company, on such terms as the County Court of such counties may prescribe; such counties may also subscribe to the capital stock of said road an amount not exceeding $100,000, and may issue bonds therefor, or may levy and collect a tax to pay the installments on such subscription."

* * * * * * *

"SEC. 6. All lands which have been or hereafter may

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* * * * * * *

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in all respects as other county elections are required to be, in and by the said laws. And whereas the said proposition or plan above stated received the highest number of votes, and a majority of all the votes given at such election, and a majority of the qualified voters of the said county of Wayne expressed their will by writing and voting "yea" upon the said several printed propositions or tickets cast by them at the said election. And whereas upon the returns of said special election being duly made, canvassed and published as aforsaid, the County Court of the county of Wayne did adopt the proposition or plan having the highest number of votes as aforesaid, and did order and adjudge and determine to execute a mortgage in conformity to such proposition or plan, and to the provisions of this instrument, to the parties of the second part as trustee. upon the lands hereinafter described, for the purpose of aiding in the construction and maintenance of the said Mt. Vernon Railroad, which said order was duly made in open Court on the 20th day of April, one thousand eight hundred and fifty-nine. And whereas by virtue of the said several acts and proceedings, the parties of the first part have become endowed with the requisite power and authority to dispose of and mortgage the said lands for the purpose of aiding the construction and maintenance of the railroad of the said Mt. Vernon Railroad Company, and the said parties deem it best for the public interest of the said county of Wayne that the lands hereinafter described should be mortgaged to the party of the second part, Trustee and Commissioner, duly appointed and selected by both the said party of

the first part and the said the Mt. Vernon Railroad Company, upon the terms and conditions particularly set forth. And whereas the Mt. Vernon Railroad Company has deemed it advisable to provide for the issue and disposal, now and hereafter, of its construction bonds, for the purpose of raising funds, from time to time, for the construction and completion of the railroad, and for the equipment thereof, and for the expense of organizing and operating the same and thereby to become indebted to divers persons, bodies politic or corporate, who shall become holders of such construction bonds and obligations in the just and full sum, in the aggregate of eight hundred thousand dollars, secured to be paid by their four hundred construction bonds or obligations of and for five hundred dollars each, and by their six hundred construction bonds or obligations of and for one thousand dollars each to the extent of eight hundred thousand dollars in aggregate to bear date on the first————,one thousand eight hundred and fifty-nine, and be payable in fifteen years from the date thereof, which will be in the year one thousand eight hundred and seventy-four, at the Bank of North America, in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annually at the Bank of North America, in said city of New York, on the first day of May and November in each year, to be secured hereby; all which bonds are to have warrants for the payments of the interest thereon attached." * * * "Full payment of the principal and interest of the whole issue of these bonds, is secured by a mortgage, bearing even date herewith, to the said Isaac Seymour, of the city of New York, as trustee, of

one hundred thousand acres of land in the county of Wayne in the State of Illinois, granted by the said State and county for the purpose of constructing and maintaining said railroad, and also by a mortgage to said Isaac Seymour as Trustee, of said railroad, its branches and other real and personal property of said Company."

Here two things are noticeable and shold be remarked by the Court. They recite the existence of the facts that give the power under the Mt. Vernon Railroad charter, and the fact that the power of disposal in this way is in the county. These recitals not only bind the party, but in law they operate by way of estoppel upon the defendant to gainsay or contradict them.

But secondly, the county, on the same day it makes this mortgage, and as a part of the same transaction executes a deed of Trust of the same lands to Isaac Seymour as Trustee. Thus it transfers the trust it had created by the Deed to Wood, and received back by his reconveyance, and thus shows a perfect and vigilant preservation of the trust by requiring him to finish its execution by seeing to and enforcing the disposition made of the funds and lands by the mortgage.

III. There was, in fact and law, in a just sense, an actual connection of the Mt. Vernon Railroad with a railroad extending from Mt. Vernon eastward to, and through Wayne county. For the proofs see Wood's deed, and depositions of Grant, Smith, Pace and Sursa. Angus Grant, one of the witnesses states in his first deposition that he has been secretary of the Mt. Vernon

Railroad Company at Mt. Vernon since May 30th, 1859. That Gustave Waggoner, engineer of the company, commenced the survey and location of the route of the road through Wayne county in the fall or winter of 1858; that L. J. Germain succeeded Waggoner, and in the spring of 1859 made another survey, definitely locating the route of the road from Ashley to or very near the eastern border of Wayne county, and both he and F. M. Sursa, who was employed with the engineers, testify that a great deal of work was done. The line was chopped and grubbed out—bridges and culverts were constructed, and ties delivered along nearly the whole length of the line. Germain's official report of this survey and location, with a profile draft of the same, is also in evidence. And let it be borne in mind that all this was done under and in pursuance of the contracts between Wayne and Jefferson counties respectively, and Vanduser & Co. Here then we have the building of a road practically advanced, if not entirely completed—a considerable amount of work performed at considerable expense, and all in pursuance of a common design—the accommodation of Wayne and Jefferson counties with a railroad. Is not this a substantial compliance with the conditions imposed by the statute? Is it not a substantial connection of roads? Is it not an evidence of good faith? Is it not ground for equitable relief? Are not the holders of the securities upon the faith of which the moneys were raised to meet these expenses, in reason and right as much entitled to indemnity as if the road had been actually completed? Are not the lands pledged as a fund for the redemption of those

securities, and for the re-imbursement of those moneys, answerable *in foro conscientiæ* for that purpose?

Again on this branch of the evidence by recital and admission of defendant, I call the particular attention of the Court to the recitals of the Deed of Mortgage and Deed of Trust sued on, and I ask the Court to note and remember the recitals and admissions in these Deeds and confirmatory Act, and the estoppel upon the defendant. Certified copies of the orders of Wayne County Court will be found in the Record, and those for the election upon the proposition also.

The Act expressly confirms the donations already made of swamp lands by Jefferson and Wayne counties, and authorizes any future donations of such lands by any county through which it may run. The power is therefore derived under this Act as well as under the charter of the Mt. Vernon Railroad. The deed to Wood is signed by the County Judges just as are the Deeds now in suit, and this Act confirms that mode of execution as well as all that had been *previously* done, while it authorized future and similar donations. If there was no more, this is enough *in foro conscientiæ* in equity, to raise and sustain an equitable right in purchasers of bonds under it.

But I have other legal sources of power in the county to convey its real estate, and leaving the consideration for such conveyance to its discretion, i. e. by gift or donation, whereas in this case, public interests were to be promoted by the construction of a railroad through the county. There are too many instances of these donations

in the United States sustained as such by this Court, ot allow a question to be raised as to the sufficiency of the consideration or motive. By general Revised Laws of 1845, hereinbefore referred to, the County Commissioners were empowered to execute all deeds for real estate, (Gross, p. 109, Sec. 40,) and the County Commissioner's Court were empowered to appoint a Commissioner to sell and dispose of and to convey any real estate of the county, and the conveyance is declared valid. (Gross, p. 159, Sec. 3.) The County Court is also empowered to sell and convey any lands when it may become necessary. (Gross, 161, Sec. 19.) These provisions are in the general statute laws of the State, and are still in full force, and also the Act of 14th February, 1859.

Thus I show full power and authority for these deeds both by the general and special laws of Illinois. These Bonds pass by delivery like commercial paper. To deny their validity or that of Deeds securing them, for want of power, under all this array of accumulated authority would shake confidence, and the bond markets in financial circles to their foundations.

I have shown that the County Court of Wayne ordered and held an election under the Mt. Vernon charter, and adopted a plan of disposing of her swamp lands as a bonus to any Railroad Company that would build a railroad through the county, in November, 1855; I have shown that the County Court conveyed these lands, in pursuance of the vote and Mt. Vernon charter, in March 1856, to Charles Wood in trust for that purpose, and *admitted* in the recitals of the Deed all the facts neces-

sary to confer the power, and claimed and asserted its existence in the county to do so. I have shown by the recitals in the Deed sued on, and the orders of the County Court thereupon, that the County Court had the power to make these conveyances, and that the defendant is now *estopped* in law to deny the facts so recited; I have shown that these recitals were authorized, as to power, by the Act of 1857, amending the St. Louis & Louisville Railroad charter, and by the general laws and by the general Act of 1859, conferring powers to sell and convey real estate and these swamp lands; and the county has shown by the agreement of consolidation of the Alton, Mt. Carmel & New Albany and St. Louis & Louisville Railroads, the same general powers of disposition in the county. But I am not done yet with the proofs. I now call the attention of the Court to subsequent acts of *confirmation* by the county and its officers, and in execution of these contracts.

At the April term of the County Court the presiding Judge, Samuel J. R. Wilson was appointed a commissioner to act as attorney for the trustee in the deeds sued on. On the 27th of April, 1859, the Mt. Vernon Railroad Co. entered into a contract to place $400,000 of the bonds, one-half of the $800,000 issued by it, in the hands and custody of Ira Hersey, to be kept and disposed of under the control of the county, the proceeds to be applied to the building of that part of the line lying in Wayne county. These bonds were delivered to Hersey as custodian for the county, June 20th, 1859. (See order of Casey and receipt of Hersey. Afterwards

on the 14th of December, 1859, the County Court appointed the Chief Judge of the Court, Samuel J. R. Wilson, its agent to take the bonds from the custody of Hersey and keep them in the custody of Wayne county, until some person mutually satisfactory to the county and Railroad Co. should be selected as custodian. June 18th, 1860, Wilson received the bonds of the treasurer, Charles W. Lewis, and then deposited them again with Lewis as custodian. This was done in New York city. Afterwards, Wilson directed Lewis, from Fairfield, Illinois, to dispose of the bonds. This is the last we hear of these bonds until they are produced in this case. Hersey's receipt for the bonds shows that he got 300 bonds of $1000 each numbered consecutively from 300 to 600 These we can trace by these numbers. The 200 $500 bonds we cannot, as no numbers were specified in the receipt. All these bonds that have been disposed of were so disposed of by Wayne county, the defendant and its agents, and the proceeds went into its or their hands. I can trace by their numbers and identify $73,000 of them in this suit. Thus the county, by its court and its agents, have time and again, subsequent to the date of the mortgage and Deed of Trust in this suit, recognized and confirmed their Deeds—have acted under—received half of the Bonds secured by these Deeds—sold them and received the money for them from these complainants, and now, in contradiction of these recitals in their Deeds in suit and the Deed to Charles Wood, say there was no power to execute them, and even if there was that it was not executed by the proper party or officer of

the county. Can law, equity, justice or common sense allow such a defense to prevail under such proofs and circumstances?

Thus I have shown that half the Bonds and means provided for their issue and secured by the Deeds sued on were in the hands and under the control of the county. Yet the county resists our recovery, because we do not show that the road was completed, and an operating, running connection formed with the St. Louis & Louisville line at the time the deed sueds sued on were made. I have shown that the 10th Section did not require this. The provision authorized "aid to be given," "in the construction," not after construction. But now I propose to call the attention of the Court to proofs showing conclusively that the county's default did then suspend the prosecution of the work, and has prevented its resumption ever since. By the terms of the contract with the county for building the road, it agreed to procure the right of way, depot grounds and the St. Louis & Louisville Railroad charter, or some other charter for the contractors and free of cost to them.

This contract was assigned to the Mt. Vernon Railroad Co. It issued these bonds, it surveyed and located the line, cleared off the timber, delivered a large quantity of ties along it and graded part, and purchased part of the rails. This was as far or farther than it was safe to go without a right of way or a charter under its control in Wayne county. Neither has been furnished to this day. Wilson directed Lewis in the letter above referred to, to raise money on the bonds in his hands to defray expenses

of procuring the charter. These funds were not to be chargeable with that expense. The right of way and charter were to be furnished under the building contract free of expense to the contractors and Mt. Vernon Railroad Co. as their assignee. Yet the defendant fails to furnish a right of way on the located line, or a charter enabling the contractors or assignee to condemn the lands for one in that county, and for depots, and it still withholds the proceeds of the $400,000 of bonds put into its hands, both from the Mt. Vernon Railroad Co. that it may proceed in building the road under the contract, and the money from these complainants, who bought these bonds of it and paid it their price in open market to which the county carried these bonds for sale. And that, too, after getting up these bonds in a marketable condition by the deeds sued on, after taking them into open market, there representing them as genuine and valid. (See Wilson's letter of May 1st, 1861, Lewis' letter to Whiting, attorney to the trustee, and certificate to Seymour, the trustee, dated May 1st, 1861.) Eighty of these bonds for $1000 in this letter are part of the bonds put into the custody of Wayne county, and no doubt the $500 bonds in the list here given are part of the 200 of that denomination in like manner put into its control. Even down to May 1st, 1861, I find that the defendant, by the county Judge, Wilson, still recognizing, confirming, acting under and carrying into operation these bonds under the deeds sued on. But as soon as the bonds were all sold, and the money was safely in the county treasury, or the hands of its own agents and custodian, Wilson, the county and its advisers and agents,

turn upon the innocent purchasers with the discovery that there has been failures to build the road—some fraud somewhere. The purchasers, it virtually insists, should have seen to it that their purchase money was applied, that the county had power to make the deeds, and that the right officers executed them. And after all his agency and activity in getting up this business for the county, and negotiating the $400,000 placed with the county, running from September, 1858, to May, 1861, Wilson now has the effrontery to come into court and swear that he always believed the transaction void, that it was not done in open court, and that he was acting for the Railroad Co. and not for the county; thus contradicting the records of his own County Court, contradicts his own recitals in these deeds, forgets all his letters and acts in behalf of the county, and contradicts the depositions of Grant and Smith. See Wilson's evidence on trial, and his deposition read by cyunty. If Wilson, as County Judge and an honest man, thought the deeds were void, he should have warned the public against purchasing them. But on the contrary, we find him doing all he can to effect the sale of these Bonds from 1858 to 1861. He gets the custody and control of $400,000 dollars of tham for the county, changes the custody from Hersey to Lewis, and directs Lewis to negotiate them and to deliver part of them to Davis to negotiate, and when $153,000 which we are able to trace as a part of them, have been sold to the parties in this suit, and to others set forth on page of the record, the county now defends against a foreclosure, without returning a single bond or accounting for a single dollar

of proceeds, and puts this same paragon of a County Judge and agent upon the stand as a witness to swear to his opinion that all he had done was without authority, and void, and on the stand as a witness to contradict his acts on the bench, and the records he made as a Court. If neither facts, justice nor law can *estop* such a witness, I suppose the Court must weigh his statements.

Equity does not measure right and justice simply by a pecuniary standard, but by the standard of morality, and conscience of however little value may be the right; yet if it be a right, it is upheld as a principle. It follows therefore upon every equitable ground that the complainants are as much entitled to relief as if their claims were founded upon and commensurate with the cost of a completed road. The opposite view that in opening a road without the actual completion of the road there was no real connection, and without such connection there was no liability of the fund, would make the creditors of the fund insurers of the success of the enterprise, and upon such terms no one would have loaned their money to aid it, and thus the fund, as we have shown in a previous part of this argument, would have been unavailable for the purpose in hand, of giving *aid* in the construction. There is neither a principle of law or equity, nor is there a commercial or financial usage that requires a purchaser of negotiable bonds, passing by delivery without assignment, to follow and see to and become responsible for the application of the purchase money.

Conceding the power, however, yet it is objected

that the deeds are defectively executed and are therefore void. This objection stands upon a technicality. The defect imputed is that the deeds were executed by the Judge and his associate, whereas they should have been executed by the Clerk of the County Court. Allow me to examine this objection. I insist, first, that a County Court under the system of polity obtaining in Illinois, is inherently possessed of power to make a grant of real estate belonging to the county, and being possessed of the power, may, as incidental to it, make it in such way and by such agencies as may be consistent with legal solemnity, and as they may approve for that purpose. The argument before made, elucidating the nature, functions and ends of counties as municipal corporations only inferior to the State itself, and their lawful capacity as such to provide roads and other agencies and accessories to supply the necessities of their constituent members, will apply with equal, and as we think with conclusive force in support of the present position. Hence we conclude that the Act of the General Assembly of Illinois providing that "the County Commissioner's Court" (now the County Court,) may by their order to be entered on their minutes appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such Commissioner under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes to convey to the purchaser or purchasers all the right, title interest and estate whatever that the county may then have in and to the premises so to be conveyed, is simply declaratory of what was pre-existing law. (Gross' Ill.

Stat., p. 147, Tit. Counties and County Courts, Ch. 27, § 3; also, pp. 525-6-7, Tit. Prob. Judge, Ch. 85.

But if it were otherwise, still these acts not only validate the deeds in question, but free them from all technical objections. They do this, because Samuel J. R. Wilson and Thomas M. Scott, the grantors, although Judges of the Court, were duly appointed and empowered, by its order entered of Record, to execute them and under such appointment in fact stood in the relation of Commissioners for that purpose to the Court.

Again they are valid, because the 7th Section of the Act incorporating the Mt. Vernon Railroad Company, constituting one of the sources from which we derive authority for their execution, expressly vests in the *County Court;* not in the *Clerk* but in the Court such authority. It is couched in these terms: "The County Court is authorized to subscribe for capital stock, and to issue bonds and to provide for the payment of the principal and interest by *sale* or by *mortgage* or by *both* of the *swamp* and *overflowed* lands, &c. What could be more explicit? The County Court is authorized by sale or mortgage, &c. The authority carries with it the means necessary and proper in order to its execution—a conveyance falls within the description of such means, and therefore the Court not as equal or ideal equity, but as a personal entity, consisting of its members, may, as in this case, execute a conveyance. The authority is without limitation or restriction as to agencies, unless indeed the authority is limited to the Court itself in its

personelle as mentioned, and if so, we are still within its letter as well as spirit, these deeds having been executed by Samuel J. R. Wilson as County Judge and Thomas M. Scott as Associate Judge. The only refuge from this argument is sought in a subsequent general law, which must be taken as a whole and construed and given effect to accordingly. Again, is it true that the general law makes the execution of such conveyances by the Clerk necessary in all cases? We deny it. The language of the law in this connection is, "The purchaser, &c., shall be entitled to a conveyance, &c., executed by the Clerk," &c. Mark the phrase! It is that the purchaser *shall* be entitled to a conveyance; not that the Clerk *shall* execute it. Evidently the provision was conceived in the interest and convenience of the grantee. It gives him an additional right, the right to demand of the Clerk a conveyance executed by him. It saves him at his discretion the trouble and delay of soliciting and waiting the action of a periodical court in a matter affecting his interest. Or at his option he may demand the execution and delivery of his conveyance by the Court by its Judges or Commissioners or by the Clerk. Our opponents further insist that the general law of February, 1859 authorizes the County Courts to sell but not to mortgage the swamp lands. Is not this a distinction without a difference? Undoubtedly the power to mortgage is included within the power to alien absolutely. It is the minor as compared with the major proposition. It may exist without the power of absolute alienation, but not *e converso*. Such I lay down to be the general law in ethics, in logic, in mathematics and jurisprudence. It

is further insisted that the order appointing and empowering the persons executing the deeds to do so, was not made in open court but in a private house, and that therefore the deeds are void. How stands the evidence on this point? N. A Smith swears it was done in open court, and the order on the Records of the Court so declares. It shows that it was made in open Court, the Judge and his associate being present, and so the Clerk, and the time, place and date of making the order, and due authentication of all this appears. On the other hand the Judge says, or intimates, that it was made at a different time and place, and not in open Court. Which is to be believed? The record—a solemn judicial record which the law regards as the highest evidence, and as absolute verity, or the dim and distant recolections of a witness impeaching his own official action and stultifying himself? The rules of evidence settle this question authorotatively. 1st, they make the Record conclusive; 2d, they make parol evidence inadmissible to impeach it, except upon an allegation of fraud, not appearing in the county's answer. Hence my objection upon such evidence upon the hearing. Admitting however such evidence, what is the escape from another and subsequent order of the same court upon the same subject, also read in evidence? I allude to the order made at a special term on the 20th day of April, 1859, reciting, ratifying and approving the execution of the deed. Is it too, to be discredited, because the order preceding it is orally contradicted? Our opponents do not say so, but they seek to discredit it on another ground, because of the

variance of the date of the recording of the deeds as recited in the order, and as endorsed by the Recorder upon the back of the deeds. This is a fine point, showing our opponents are hard pressed and are ready in despair, as drowning men, to catch at straws. It is a quibble rather than an argument, and may be answered in several ways. 1st, the order as a judicial act is unimpeachable except for fraud which is not charged; 2d, the order and the deeds mutually corroborate each other as to the substantial material fact of the execution of the latter; 3d, the variance as to the date of the recording of the deeds is void of legal or equitable effect as between the grantors and their grantees and *cestui que trusts*. In other words the deeds would be as efficacious between the parties to this suit without being recorded as with it. So far the question of form or manner has been contested upon a field chosen by our adversaries, upon their own selected proofs; but extending our view of the evidence, what do we find? Unfortunately for our adversaries their previous and solemn admissions sap their defense and in fact turn their weapons upon themselves. Out of their own mouth are they condemned. Prior to the execution of the deeds in question, the Judges of the Wayne county Court execute a deed to Charles Wood, conveying the same lands in trust in aid of the construction of a railroad, in fact if not nominally, the same road before mentioned, and the prospect then failing, Wood in turn reconveyed the lands to the county, but it will be remarked that the deed to Wood contained many recitals. Again in the mortgage executed by the Judges of the same court the facts and power are recited. Again in another

Deed of Trust executed by the same Judges on the first part, Ira Hersey on the third part, and the Mt. Vernon Railroad Co. of the second part, touching the disposition and division of the bonds mentioned, it is recited. Again it is in evidence, that the County Court appointed and empowered Wilson to change the depositary of the bonds specially devoted as a fund for the construction of the road afterwards located and partially constructed through Wayne county; and that he did so, which is the last we heard of these bonds until they were put into circulation. Wayne county paid nothing for them. Again a contract for the purchase of iron signed by the Mt. Vernon Railroad and Jamison, Newcomb & Elliott was read in evidence, showing that bonds were hypothecated to raise money to pay for the iron.

In the last resort the county's counsel protest the failure of the enterprise and of the county to derive any benefit from it. Grant it; yet whose fault is it? Surely not that of the appellee's who had no part in conceiving, recommending, projecting or undertaking to execute it. They are blameless, and strangers as to all these things. Not so the county, who was party and privy to all of them. The consequences, therefore, legally and equitably should fall on her and her co-party and co-defendant the Mt. Vernon Railroad Company, whose franchise and constructions have been already sold under a decree entered in the case. Equality and equity would subject both alike, in this case, to liability and to the redemption of their respective pledges. A different rule would be invidious and unjust.

All the equities of this case are with the appellees. The county pledged her swamp lands for the redemption of the Company's bonds. The bonds so recite upon their face. See copy of bond. But for that pledge the bonds would have been unmarketable. That pledge gave them credit and currency. Upon that pledge the appellees bought and paid their money for them in the fair course of their legitimate business. Wilson, the County Judge and Agent of the county, recommended them as a good and eligible subject of investment; and all of the appellees depose that they are bona fide holders of these bonds. Moreover, the deed of trust executed April 20, 1859, by Wayne county, the Mt. Vernon Railroad Company and Ira Hersey proves that one half of the whole amount of bonds issued by the county, to-wit, $400,000 of them, were specially set apart for the construction of so much of the road as should be located in Wayne county.

It also appears from the recitals in the deposit contract of April 27, 1859, between Wayne county of the first part, and the Mt. Vernon Railroad of the second part, and Ira Hersey, custodian of third part, which we here extend:

"Whereas the County Court of the county of Wayne, in the State of Illinois, by virtue of the laws of the State of Illinois, and of the proceedings thereunder had and taken, hath executed in due form, acknowledged and duly delivered its certain Deed of Trust and Indenture of Mortgage to Isaac Seymour, Esq., of the city of New York, Trustee, each bearing date the twentieth day of April,

1859, whereby the said County Court did grant and convey to the said Isaac Seymour such Trustee, one hundred thousand acres of land or thereabouts, lying and being in the said county of Wayne, and particularly described in said Deed of Trust and Mortgage. And whereas the object and purpose of the said Deed of Trust and Mortgage were to aid in the construction and maintenance of the railroad of the Mt. Vernon Railroad Company, and to secure the payment of the construction bonds issued by the said Company, the railroad of which said Company is designed to be constructed from Ashley, in the county of Washington in said State, through the county of Jefferson and Wayne in said State, and to the eastern boundary of the said county of Wayne. And whereas the said Mt. Vernon Railroad Company has issued its four hundred construction bonds of five hundred dollars each, and its six hundred construction bonds of one thousand dollars each, for the purpose aforesaid: and it is *designed* and *intended*, that, *one-half* of said Bonds *shall be appropriated and set apart* for the *sole* and exclusive purpose of aiding in the construction of, and maintenance of so much of the railroad of the said the Mt. Vernon Railroad Company, as is or shall be located or situate in the county of Wayne." This contract witnesses that the Mt. Vernon Railroad Company have "issued and delivered to the party of the third part, in trust, two hundred of the construction bonds or obligations of five hundred dollars each, and three hundred of the said bonds or obligations of one thousand dollars each, to be held by him subject to the terms, stipulations and conditions of the said Deed of Trust and of said Mortgage, for the sole and exclusive

purpose of appropriating and expending the same or the avails thereof to the construction and maintenance of so much of the Railroad of the said Mt. Vernon Railroad Company as shall be located or situate within the said county of Wayne and not otherwise. And the said parties of the first part do hereby respectfully assent and concur in and to the said transfer and delivery of the said construction bonds as herein provided, for the purposes aforesaid, and they covenant that such application and appropriation of the same shall be to the amount and extent thereof, in all respects an effectual fulfillment of the several purposes and trusts for and upon which the said lands and premises were conveyed and mortgaged." Hersey, the third party, covenants that he will receive, hold and appropriate the bonds and proceeds upon these trusts, uses and purposes.

The half of these bonds was accordingly handed over to Hersey, and afterwards by mutual consent the custody and trusts were changed from Hersey to the county, and coming into the hands of the County Judge, Wilson, he placed them in the hands of Charles W. Lewis, and they were negotiated and disposed of under Wilson's direction for the county. N. A. Smith testifies that Judge Wilson was the General Agent for the county and had a written power to act for the county.

Now I wish to call the attention of the court to this deposit agreement. By it, it appears that the railroad was to issue the whole of the bonds, and Wayne county was to give half of the security for their payment, name-

ly, a mortgage of her swamp lands, and she was to have half the bonds and control and dispose of them and their proceeds in building the line within her limits. This contract carries out that arrangement, and the delivery of the bonds to Hersey under it. The county covenants for the proper use of the bonds and proceeds, and an "effectual fulfillment" of the "purposes and trust" it assents and agrees was made by the Railroad Co., by the "transfer and delivery" of the half of the bonds to Hersey.

We also note again in this contract that the county studiously and carefully provides for and preserves the *trust*, making Hersey a Trustee of the value of these lands in these bonds for which they were mortgaged. They are "delivered" to him "in trust." Seymour is made *Trustee* of the land encumbered for the bonds by the mortgage, and Hersey is made *Trustee* of the bonds for which the lands are encumbered and charged.

The trust was created by the Deed to Wood, returned to the county, and the county endeavors to execute the trust by these contracts to build the road, and these Deeds of Mortgage, Trust and Deposit of Bonds; but in all stipulating to protect, preserve and apply the fund and its proceeds to the objects of it. The records of the County Court on December 29, 1859, show that the County Court then ordered a change of the custody of these bonds, and appointed Judge Wilson agent to effect it, and the orders and receipts in evidence passed between Casey, Hersey, Wilson and Lewis show and prove that Wilson made the change. And here let us remark

that a portion of these very bonds constitute an identical part of the bonds purchased by Hodges from Wilson and Lewis, and by others—Ward, Brown, Earl, Wakefield, Plunket, Burnet, Ralston and Emerson, amounting in all to $73,000, as will appear by a comparison of the numbers in the Bill and amended Bill. Hersey's receipt for the bonds shows that he received 300 $1,000 bonds numbered 300 to 600. Eighty more were disposed of and are traceable in the letters of Lewis and Wilson making $153,000 of the identical $1,000 bonds delivered to Hersey under the contract. The balance we presume were disposed of by them for the county, and the proceeds received by the county or its agents for it, probably by Wilson, or he and Lewis, as the bonds were in their custody and under their control for the county. If they were not disposed of, where are they or their proceeds? It behooves the county, in good faith, in law, equity and justice, to withdraw its opposition to a recovery here, or return appellees their money; or show, in other words, what has become of these bonds or their proceeds. Yet they have failed to do either.

Wilson directed Lewis to deliver Davis and Hersey some of the bonds and to retain some to meet his own advances. But appellees are not required by law, equity or common justice to account for these bonds, nor are they required to follow and see to the application of the proceeds of them, when sold to others or purchased by themselves. The county has had half these bonds, and yet has them, or has had their proceeds; and it has failed to procure the right of way or the use of the St. Louis

& Louisville Railroad charter for use, as covenanted to be done in its building contract; has failed to pay the appellees either interest or principal, and now resists an enforcement of the Mortgage and Deed of Trust. Now after all these things have been done and omitted to be done by it, shall it be allowed to repudiate its solemn deeds as being unauthorized or as informal acts? Or shall it be absolved from its contracts and obligations for a failure of success in its laudable efforts to make such a valuable public improvement? A failure unavoidably and necessarily resulting from its own failure to furnish a right of way and a charter. And shall the losses all be thrown upon capitalists who invested in good faith in the bonds secured by her mortgage? Shall she be allowed to take $400,000 of the $800,000 of bonds issued by the Company, and use them and shirk the payment of any portion of them? Shall she in this way leave the Company to pay them, or in default of their doing so leave *bona fide* holders of them to sustain the loss? Shall she be thus favored in contrast with the bondholders whose money she got, and the Company whose franchise and property have been already sold under a decree in this case to satisfy its bonds? Shall she go scot free and the Company be held bound? In fine shall she, first pledging her faith and land for the redemption of all the bonds indifferently, and so giving all of them their chief, if not only credit and value, and so an inducement to the public to buy them, *now* be allowed to repudiate her pledge and betray the public? The proposition is monstrous. Law, equity, morality and common decency forbid it. Such doctrine obtaining, a blow would be struck

at all forms of public securities, which would startle and alarm public confidence. The loss to result might and probably would be enormous.

II. The conclusions which we have reached above, based upon the Statutes of Illinois and the evidence in the case, are abundantly sustained upon principle and authority. The POWER to mortgage or convey their swamp lands being expressly conferred on the county of Wayne upon certain conditions subsequent, or outside facts and things *in pais* to be done and performed, it devolved on that county, by its proper tribunal, to decide and determine, whether or not the facts so forming conditions to the exercise of the absolute grant of power had in truth come into existence, or been regularly performed. Having in this case so adjudged, determined and certified to the world, on the face of negotiable money bonds by the county secured to the holders by mortgage lien on these lands, as between that county and the bona fide holders of such securities, the question was and is, *ex vi termini* FOREVER FORECLOSED as to the actual existence or performance of such conditions precedent. It is between these parties no longer open for inquiry.

In *Gelpeke vs. City of Dubuque* (1 Wallace 203,) this Court laid down the proposition broadly as follows:

"When a corporation has power under any circumstances to issue negotiable securities, the bona fide holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity

in the hands of such a holder than any other commercial paper."

The Court refer to the cases establishing the rule, viz:

Commissioners of Knox Co. vs. Aspinwall, 21 How. 539.

British Bk. vs. Tarquand, 6 E. & B., 327.

Tanners L. & T. Co. vs. Curtis, 3 Selden, 466.

Stoney vs. A. L. I. Co., 11 Paige, 635.

Morris Canal & B. Co. vs. Fisher, 1 Stock. Ch. 667.

Wilmarth vs. Crawford, 10 Wend., 343.

Allegheny City vs. McClarkan, 14 Penn., 83.

In *Com'rs of Knox Co. vs. Aspinwall* this court say "The Bonds on their face import a compliance with the law under which they were issued. The purchaser was not bound to look further for evidence of a compliance with the conditions of the grant of power.

Judge Nelson in delivering the opinion of the Court adds further:

"We do not say that the decision of the Board (the county) would be conclusive in a direct proceeding to inquire into the facts previously to the execution of the Power, and before the rights and interests of third parties had attached; but after the authority has been executed, the stock subscribed, and the Bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a bona fide holder of the bonds in this collateral way."

The case of *Bank vs. Tarquand* is to the same effect. By the charter of a joint stock Company the Directors had power to borrow money in such sums as a general resolution of the Company should authorize. The action was on one of the Company's Bonds; the defense that no sufficient resolution was in fact passed. The Court said, "Finding that the authority might be made complete by resolution, he (the purchaser) would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done."

The other cases cited by the Court are to the same effect, and in *Stoney vs. A. L. I. Co.*, the ruling is quite as emphatic, viz:

"A negotiable security of a corporation, which upon its face appears to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a *bona fide* holder thereof, without notice, although such security was in fact issued for a purpose and at a place not authorized by the charter of the Company, and in violation of the laws of the State where it was actually issued."

At the same Dec. term, 1863, this Court held in the case of *Mercer Co. vs. Hackett* (1 Wallace, 83,) that

"Where a county issues its bonds payable to bearer, and solemnly pledges the faith, credit and property of the county under the authority of an Act of the Assembly referred to on the face of the Bonds by the date for their payment, and those Bonds pass *bona fide* into the

hands of holders for value, the county is bound to pay them. It is no defense to the claim of such a holder that the Act of the Assembly, referred to on the face of the bonds, authorized the county to issue the bonds only and subject to certain "restrictious limitations and conditions" which have not been formally complied with; nor that the bonds were sold at less than par when the Act authorizing them and referred by date on the face of the instrument declared that they should "in no case" nor "under any pretence" be so sold. Corporation bonds, payable to bearer, have in this day the qualities of negotiable instruments."

In the case at bar the bonds recite the Mortgage pledge, and the Mortgage and Deed of Trust adopt the bonds and recite the law and A FULL COMPLIANCE with the law authorizing the mortgage pledge. The holders are *bona fide* purchasers in any of the property pledged in and by delivery of the bonds *pro rata*.

This doctrine was again affirmed by this Court in *Rogers vs. Burlington*, (3 Wallace, 654,) viz;

"Power to issue the bonds (in this case mortgage) being shown the municipal corporation as against bona fide holders of them for value is *estopped* to deny that the power was properly executed."

In *Moran vs. Com'rs of Miami Co.*, (2 Black, 722,) the doctrine of *estoppel* was fully applied in a like case. This Court there held that

"A county or other municipal corporation being authorized by Statute to borrow money and issue bonds

for the payment thereof, if the bonds be made and delivered *reciting the facts*, which show them to have been regularly issued, the county *is estopped* to deny their regularity or to assert that they were not made in conformity with the statute."

The authorities cited in the earlier cases are again referred to and approved.

The *recitals* in the Mortgage and Trust Deed and in the Bonds, mutually referring to each other, in this case, *conclusive* upon the county, as are also the *recitals* in the Deed to Wood, forming a link in the chain of title, and all under the same trust, (Wood having re-conveyed back to the county.) These *recitals* conclude the county as a plenary admission of the facts, *as facts* constituting the conditions to the execution of a mortgage by them of the swamp lands, and form an absolute *estoppel*. This is an elementary principle of law.

"The parties to a deed are *estopped* to deny the truth of the recitals therein."

U. S. vs. Benning, 4 Cranch, C. C. R., 81.)

"Recitals in a deed are binding on the parties to it, and those claiming under them."

West, vs. Pine, 4 Wash. C. C. R., 691.

A recital of one deed in another binds the parties and those who claim under them. Technically speaking it operates *as an estoppel* and binds parties and privies in law. (2 P. Wms. 432; Willes 9; 1 Salk. 276, 285; 6

Mod. 44; 6 T. R. 171; 2 B. & Ald. 242, Comyn's Dig. Es. B. & E.; Coke, Litt. 352, *a*, 3 J. cases 174; 4 Binney 231-314; 17 Mass. 244, 571; 4 Peters 1; 6 Peters 598.)

As applicable to the construction above in this argument contended for, of Sections 7, 8 and 9 of the Mount Vernon Railroad charter cited *supra*, we call attention to the case of Woods vs. Lawrence Co. (1st Black, 386,) in which this Court held the same principle, viz:

"Where the charter of a Railroad Company authorizes a county "THROUGH WHICH IT MAY PASS" to subscribe to its stock, a county lying between the two *termini* of the road may subscribe without waiting until the road is actually located."

So it is contended here that the Act does not contemplate an actual, material connection under the words "may be connected," in the future potential mood, as we have shown *supra*, but a legal possibility, the realization and fruition of which as "an accomplished fact" the county lawfully took upon itself the chances and the responsibility.

In Supervisors vs. Schench, (5 Wallace, 784,) this Court again said:

"It is settled law that a negotiable security of a corporation, which upon *its face* appears to have been duly issued by such corporation, and in conformity with the provisions of its charter, is valid in the hands of a *bona fide* holder thereof without notice, although such

security was in point of fact issued for a purpose, and at a place not authorized by the charter of the corporation."

I submit that this uniform series of cases, based upon the solid foundations of justice and sound morality, can not now be broken without unsettling, and with a rude shock, the whole commercial world. The county of Wayne cannot be permitted to say now to the creditors, (who have taken these bonds and paid their money for them, at the instance of the county, and on the faith of her pledge and solemn representations,) that there was in fact no proper vote, and in fact no proper connection with a road through Wayne county at the time she determined and represented there was, without overruling all these decisions. And such must be the re-actionary course of this Court if this decree be not affirmed.

I trust with confidence that the heretofore settled rule will be adhered to, and that the decree may be affirmed with directions for a sale of the lands to satisfy the bonds.

WALTER B. SCATES,

COUNSEL FOR APPELLANTS.

IN THE

SUPREME COURT

OF THE UNITED STATES,

No. 255.

OCTOBER TERM, A. D. 1876.

JOHN W. KENNICOTT, et al.,

Appellees.

ads.

THE SUPERVISORS OF WAYNE COUNTY,

Appellant.

Brief and Argument for Appellees.

WALTER B. SCATES,

COUNSEL FOR APPELLEES.

CHICAGO:

Houlihan Bros., Legal Printers, 242 South Water Street.

1877

Supreme Court of the United States,

THE BOARD OF SUPERVISORS OF WAYNE CO., et al.,

vs.

JOHN W. KENNICOTT, et al.

No. 255.

Appeal from Circuit Court U. S. for the Northern District of Ills.

ARGUMENT OF W. B. SCATES,

for John W. Kennicott; Cyrus Wakefield; Joseph W. Ward; Austin Myers; Maurice J. Earle; John H. Brown: William L. Ralston; John J. Dixwell; Joseph Burnett; Wm. C. Plunckett; Joseph Smith; John Sargent Smith; John L. Priest; Eben W. Stone; Henry V. Davis; Andrew H. Ward; Arthur F. Gould; Peter McMartin's Estate; Wed. W. Clark; Isaac Taylor; Nathaniel H. Streator; H. N. Holden; Ammidown, Lane & Co., Ransom, Geer & Co.; Roxana Crego; and Herman Powers.

I.

MAY IT PLEASE THE COURT:

I have reprinted the former statement and argument in this case, heard and decided by this Court in January,

1873, reported in 16 Wall. 452—in order to show the issues and questions presented by the pleadings and proofs, and decided by this Court. I am not able to perceive the object of introducing much of the proof into this record, taken since the case was remanded—unless it be for the purpose—by adding some additional evidence—to raise again and present for review the same points decided upon the former hearing. If that be the object, I submit to the court, that the appellant cannot in this way, by a second appeal, be allowed to review the decisions of this Court already made.

In the case of Santa Maria, 10 Wheat. 431, it was settled that upon appeal from a mandate to carry into effect the former decree, nothing is before the Court but the proceedings subsequent to the mandate. In Sibbard v. U. S., 12 Pet. 488, it is held as well settled that the Superior Court had no power to review their decisions, whether in a case at law or equity. A final decree in Chancery is as conclusive as a judgment at law. Both are conclusive on the rights of the parties thereby adjudicated. No principle is better settled, or of more universal application—that no court can reverse or annul its own final decrees or judgments for errors of fact or law, after the term in which they have been rendered:—from which it follows that no change or modifications can be made which may substantially vary or affect it in any material thing.

On a subsequent appeal nothing is brought up but the proceedings subsequent to the mandate.

3 Wheat. 591 Cameron vs. McRoberts.

7 Wheat. 58. Browder v. McArthur,

15 How. 464 Corning et al., vs. The Troy Iron & Nail Factory.

17 Wall. 283 Tyler vs. Magwyre,

20 How. 467 Roberts vs. Cooper.

30 Missouri 156 Chambers vs. Smith.

38 Missouri 209 Overall vs. Ellis.

The Metropolitan Bank vs. Taylor, Ms.

Decision Sup. Ct. Mo. Jan. Term, 1876, reported in Chicago Legal News of March 25, 1876, page 218.

1 Wheat. 304 Martin vs. Hunter.

I refer also to the opinion of Judge Drummond reported in 6 Bliss. 138 and present the same as a part of my argument. It contains a full and lucid review of all the evidence taken since the former hearing and decision in this court.

Judge Drummond—sitting with Judge Treat—says:

"We have not examined the printed record in this case as it appears filed in the Supreme Court of the United States. We have only examined the testimony taken since. Under the case as it stood in the Supreme Court, it was decided that the deeds were valid—that the mortgage which was given to secure bonds issued by the Mt. Vernon Railroad Company was a valid security; and the only question therefore now before us is, whether the bonds and coupons presented by the various parties complainant, are held by them in good faith and for value received.

Upon an interlocutory decree the case was referred to the Master, and he was directed to inquire as to the

amount of these claims and the parties who held them. A supplemental report was accordingly made by the Master. To this report no exceptions are filed. It was understood, however, that the objection might be afterwards taken that these parties were not *bona fide* holders.

There are some exceptions to the evidence, which perhaps, the court ought to decide.

For example, as to the letters that were introduced between the parties, who formed, to a greater or less extent, "a ring," as it was said, by which the County of Wayne was defrauded of the proceeds of these bonds, or of the bonds themselves. I believe none of these letters are written by any of the bondholders—they are simply letters between the various persons who had some connections, their delivery of their transfer; but they are mere private letters which ought not to bind the bondholders—unless connection is shown between them and the letters themselves. I do not understand that anything of that kind is proved, and they become, therefore, as to them *res inter alios acta*, and by which, of course, they should not be bound.

They are therefore entirely incompetent to affect any questions in this case.

There are only a few of the claims to which it is necessary to direct our attention, to determine whether or not these bonds and coupons are in the hands of *bona fide* holders. We have come to the conclusion that all of them which have been presented are in such hands.

In relation to the claim of Ransome & Co., boot and shoe dealers, it is said they sold goods and received bonds from Mr. Lewis in payment. Mr. Lewis being the treasurer of the railroad company. Now the mere fact that the goods were received for the bonds, while it may be a suspicious circumstance, is not, of itself, sufficient to prevent a party being a *bona fide* holder. Mr. Lewis was the treasurer of the company; the bonds were in his hands—or might have been in his hands—for negotiation, transfer or sale. It may be that certain goods were as valuable for the construction of a railroad, as money itself. For example, iron, or any of the materials which would go to the construction of the road. So any goods which could be transferred to, or used by, the operatives of the road, and which would go to them in compensation for their services which they had rendered, or might render, would be just as valuable as money. The mere fact that goods were received, does not prevent the bonds being held in good faith and for value. There must be circumstances showing that the purchaser of the bonds knew that there was a corrupt or fraudulent motive on the part of the vendor, or person transferring the bonds, in order to make him an holder in bad faith. There is nothing of the kind shown here. On the contrary it is shown that they were the holders in good faith and for value, but that they received them in payment for goods instead of money.

As to Mr. Myers' claim, the chief objection made to that is in consequence of facts that are contained in the original record, and upon which we think, the Supreme

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As to Mr. Myers' claim, the chief objection made to that is in consequence of facts that are contained in the original record, and upon which we think, the Supreme

Court has substantially passed, and with which we do not feel inclined to interfere. If the Supreme Court made mistakes in relation to the facts, it is only respectful on the part of this court, to require the parties to go to that court to have these mistakes rectified. The Supreme Court say in effect that, on the assumption that certain principles of law stated by that court were correct, there was, in point of fact, no defense.

It is objected that this matter was referred by an interlocutory order to the Master, and that the parties who were claimants upon these bonds were required to appear before him at his office in Springfield, on or before a certain day named, and prove their claims.

Under this interlocutory order notices were given to the opposite counsel by publication and proofs have been taken in New York, and presented before the Master in the form of depositions, proofs being taken, under the acts of Congress, and the objection is that this is not a literal compliance with the order; that these proofs ought all to have been taken personally before the Master.

These proofs, so far as the claims are concerned, related to the bonds themselves, which were the subject of controversy and as to which the Supreme Court had decided that the security given by the county of Wayne was valid, and therefore all that need appear was that these parties having these bonds or coupons, were the holders in good faith, and we think that they may be presented before the Master here, through either their agents or attorneys upon proof thus taken, under the acts of

Congress. It is true that the order might have been more general, and might have stated that proof in relation to the *bona fide* character of the holders might be taken elsewhere; but where the bonds are presented before the Master, and there is nothing to throw suspicion upon the bonds, it is not material how they are presented. They are within the scope and spirit of the order. If they are presented by the claimants before the Master, by their agents or by their attorneys in whatsoever way that may be, and the fact that proof has been taken on notice or that petitions have been filed fortified by affidavit, we think ought not to prevent the operation of interlocutory order, and this independent of the seventy-seventh rule. They are in the largest sense presented before the Master, in Springfield, though proof may have been taken in New York. Now in some of the cases the bonds are produced before the Master, the holders thereof, stating that they are the holders in good faith. The presumption of law is that they are the holders in good faith. These bonds have all the characteristics of negotiable instruments. When a man presents himself before the Master with such a bond in his hand, it is a presumption of law that he is a *bona fide* holder. It was objected by counsel of the defendants that there was no proofs as to the *bona fides* of these holders. If there had been any evidence introduced on their part calculated to throw suspicion upon the good faith of the holder, then it might have been proper for the court to give the defendants an opportunity of introducing evidence upon that point; for instance, in relation to the bonds presented by Mr. Crooks who presents them to the Master, and the Master makes

a supplemental report in relation to them. Now, if there was any special evidence calculated to throw suspicion upon these particular bonds then the court might have required the claimants to supplement the evidence created by the holding and presentation of the bonds, by some additional evidence. But that has not been done here. They were asked if they had any evidence on that subject, but none has been produced, and so we have to take it as a presumption of law, not met by anything to countervail it, that these parties are the holders of the bonds in good faith and for value.

These considerations, I think, dispose of all the questions that are in the case. We cannot lose sight of the fact in considering and deciding this case, that the substantial defence in the case has been considered by the Supreme Court and decided against the defendants; and that therefore the only question is an incidental question, growing out of the position of the bond-holders.

No doubt the county of Wayne has been very much wronged in this case. Gross injustice, and, if you choose, fraud, has been practiced upon the county by its own citizens, and by its own officers; but unless these bond-holders can be connected with that fraud, by notice, or by some circumstance calculated to throw suspicion upon their possession of these bonds, it would be contrary to the first principles of equity and right that they should suffer for the wrong committed by the officers of Wayne county or the Railroad Company, who had the disposal of these bonds.

It may be perhaps questioned whether these municipal bonds should ever have been held to be valid, as affecting municipalities, counties, towns and other similar public bodies, on the ground that so large a number of people, and so vast an amount of property should not be affected by a wrong or a fraud practiced by the individuals who have the sale and the transfer of these bonds. But that question has been foreclosed. It is not an open question now in the Federal Court. It has been universally held that municipal authorities can make and issue bonds, provided they have a law authorizing it, and that the officers employed and elected by them, can negotiate them. Therefore it comes back to this, after all: that being so, these municipalities should be more careful than they have been as to the men they intrust with their funds. They should have selected honest men, and not swindlers. If they have selected the latter they must stand by the consequences, just as a man must who employs an agent to do his business—if the agent commit a fraud, the person with whom he has transacted his business and who has acted in good faith, cannot be permitted to suffer. The person who has employed him, and held him up to the world as his agent must suffer. This principle has been applied to municipalities in cases like this. Therefore if it be true that the county of Wayne has been wronged in this transaction, it has been done by its own agents, and it must suffer the consequences of that breach of trust committed by them.

It has occurred as a question to us whether we should direct the sale of this property without redemption. We

issue the execution of such instruments. These bonds being payable to bearer—like bills of exchange—pass by delivery, and in the absence of proof to the contrary, are in law deemed to belong to the holder. All the bonds presented by the parties represented by me, in this case, were held by them *bona fide*, and for which they paid a valuable consideration, and in addition to the legal presumption arising from possession, they introduced testimony, and for illustration, refer the Court to the following testimony in the record:

For bonds Nos. 19, 35, 38 and 60, the testimony of Joseph Hayes, (Record p. 198.) For the bonds of John W. Kennicott to D. L. Phillip's testimony page 200. That of Kennicott himself, pp. 304-5, and to the Master's Report, pp. 201-213. For the bonds of J. H. Brown, pp. 133-4 and 306-7-8. For the bonds of A. H. Streator, pp. 311-312. For the bonds of E. H. Ammidown, pp. 330-202-213. For the bonds of A. Geer, pp. 336-202. For the bonds of A. H. Holden, pp. 342-202-213. For the bonds of W. W. Clark,pp. 348-202-213. For the bonds of J. W. Ward, pp. 133-201-213. For the bonds of A. Myers, pp. 134-135-201-213. Testimony of N. A. Smith, pp. 274-297. For the bonds of M. J. Earle pp. 135-201.213. For the bonds F. A. Hawley, pp. 197-202-213. For the bonds of R. Crego, testimony of T. H. Crego, pp. 301-202-213. For the bonds of I. Taylor, 202-213, and to the testimony of C. A. Boardman, p. 304; and for the bonds of W. L. Ralston, J. J. Dixwell, J. Burnett, W. C. Pluneckett, J. Smith, J. L. Priest, E. W. Stone, J. S. Smith, H. V. Davis, A. F. Gould and

A. H. Ward, pp. 201-213; and for the bonds of McMartin and Alexander, H. Powers and Ransom Geer & Co. pp. 202-213, and Brown's testimony, 306-307; and the bonds of Cyrus Wakefield, Master's Report, pp. 201-213 and Brown's testimony, p. 308.

The exceptions to the Master's Report, were based upon mere assumptions, unsupported by any proof. See exceptions, pp. 236-237-238. The depositions of C. H. Dillingham, p. 269; A. T. Post, p. 275; A. W. Beasley pp. 276-293; D. M. Johnson, p. 294. Bond brokers of New York City seemed to have been taken upon the idea and assumption that it required the testimony of an expert to prove the marketability of a a Railroad Bond, and these experts have proceeded, in giving their opinions, upon the assumption that no bond is marketable unless it falls within the rules, and is entitled to be offered for sale on the stock and bond exchange boards in the city of New York; and if not admissible to the list of securities there bought and sold, it is not only not marketable among bond brokers, but that an actual sale of it from a railroad to a purchaser, cannot be genuine; nor can the purchaser take it *bona fide*. It would be doubtless a wind-fall and a God-send for this class of operators—known as bond brokers—if the Court would decide that no *bona fide* sale of such securities could be made until they were approved as marketable by bond brokers; and it would, at the same time add to the chances of profit of the Bulls and Bears of the board, if the court should decide that all such securities should become admissible upon the board, before

a *bona fide* sale of them could be made. Congress once tried to put the Gold board under some restrictions, and failed. Probably nothing short of a Providential Black Friday could arrest them; nor less than Omnipotence can abolish them, and that by eradicating the love of greed from the human heart. It does seem to me little less than an insult to common sense to offer such opinions as these, to impeach the *bona fides* of my clients in the purchase of their bonds: and I leave the Court to acknowledge the compliment paid to its intelligence and understanding of commercial and financial transactions,—in offering such opinions as evidence to influence its judgment.

There is another class of witnesses upon whose testimony I would make a passing criticism, to-wit: that of S. J. R. Wilson, p. 282; E. Bonham, pp. 281-289; W. Irvin, p. 286; R. T. Forth, p. 286; J. W. Barnhill p. 290; J. Barclay, p. 299, and D. Baugh, p. 309.

I remark, first, taking this evidence altogether, it simply shows the great anxiety of the people of the county to have—and the efforts made by them and others, to procure a railroad through the county, and the efforts put forth by the county and railroad officers and agents, to procure a charter in compliance with the building contract between the county and VanDuser, Smith & Co. The failure of the county to procure a charter in compliance with its contract, is surely irrelevant testimony as to the genuiness of the bonds, or the *bona fides* of the present holders.

A second remark that I have to make, is in relation

to the attempt of the witnesses Wilson and Irvin, Slocum and Barnhill—County officials at the time the deed of trust and mortgage sued on, were made, to impeach and set aside as a fraud, the orders made and entered of record by them as judges and clerks of the court. I have but two remarks to make in answer to this infamous attempt: First, that officers that would make such records for the purpose of foisting commercial bonds upon the market, are incapable of giving *credible* testimony as to their fraudulent acts; and second, the law deems such records a verity, and an estoppel upon the county, as to *bona fide* purchasers of bonds made under such records. I leave these witnesses to settte with their constituents and their conciences, if they have any, before their God, which, may be the truth, their acts or their oaths. Mr. G. Barclay, p. 299, swears that by the order and direction of the judges and request of the clerk Barnhill, he wrote out the orders upod the records. I have one remark to make upon the testimony of J. N. Whiting. In his deposition p. 268, being the counsel of Seymour the trustee, expresses an opinion "as a professional man," that none of the bonds had a legal inception for the purpose of construction and equipment by Railroad Company unless it be those given to Mr. Seymour for his services as trustee, and those given to witness for his services in drawing the papers and giving advice.

Mr. Whiting is either unfortunate in his memory or inconsestant in his opinion as is shown by list of bonds certified by the treasurer of the company to him, as counsellor, containing on hundred and seventy-two bonds of

one thousand dollars each, and one hundred and sixty-eight bonds of five hundred dollars each, certified to him by the treasurer in May, 1861, as a list of the recognised bonds of the Mt. Vernon Railroad Company. This will be found on page 92 of the record; and again April 25, 1870, he recognised the genuineness of the bonds of the company in a letter to me which will be found on page 260 of the record. And again in an emphatic opinion of indorsement of the genuineness and validity of all the bonds in answer to a letter of Chas. W. Lewis, treasurer, under date of April 25, 1861, which will be found as exhibit A, on page 306 of the record.

I therefore leave with the court the difficult task of reconciling his conflicting opinions. I have a remark to make in reference to the deposition of N. A. Smith, p. 297.

Mr. Smith was the first treasurer from the organization of the contractors VanDuser, Smith & Co., in 1858, until the appointment of Lewis in 1860, see record pp. 88-89. And in his deposition he states, p. 297, that he cut off the coupons as they became due: that is upon all the bonds not issued and in his possession, and filed them away in the company's safe, and so kept them until his resignation as treasurer, and then turned them over to his successor Mr. Lewis, together with all the bonds that had not been hypothecated or sold.

Few, if any bonds were sold within a year after their date, and most of them had two and three half yearly coupons overdue and cut off, when negotiated. Each bond had thirty coupons running from 1 to 30, the bonds

running 15 years, with a coupon for each half year's interest, as will be seen by a copy of one on pp. 313-317, the lowest numbers being those first falling due. Three of my clients presented detached coupons. The court will see by reference to the abstract of the Master in Chancery on p. 213, and the vouchers filed, that none of of the coupons presented by my clients were of the number or numbers cut off by Mr. Smith as overdue before negotiation, and for the purpose of making this comparison, I refer the court to the abstract on p. 213 on which J. H. Brown stands No. 8,—on the voucher No. 8 of Mr. Brown's detached coupons, on p. 220 of record, the court will find his detached coupons ranging from May, 1861 to May 1864.

On abstract p. 213, stands No. 30, on page 228 voucher No. 30 to abstract, shows that Mr. Gould's detached coupons bear date from May, 1861 to May, 1864. On the abstract A. H. Ward stands No. 31; voucher 31 is shown on p. 229, and the detached coupons belonging to Mr. Ward, as there shown, fell due from May, 1861 to May, 1864. It will be seen by reference to the copy of coupons on pages 316-17; that the coupon falling due May, 1861, was numbered fourth on the bond; and that falling due May, 1864, was numbered ten on the bonds; bonds, therefore, not negotiated until November, 1860, would have one coupon detached, those negotiated after May, 1860, would have two coupons detached, and those degotioted after November, 1860, would have three coupons detached.

Now as Mr. Smith did not resign until May, 1860,

when two coupons were overdue and detached, and my clients hold no coupons of an earlier date than May, 1861, it is apparent and evident that the coupons presented by them are not of the number of the coupons overdue and detached by the ~~measure~~ before the bonds, to which they belong, were negotioted and we bring no coupons here tainted by any such semblance of fraud.

Again, in relation to the bonds of my client A. Myers, Mr. Smith says in his testimony p. 297, that he gave bonds to Mr. Kendrick for currency on a southern bank, and that the sale of Mr. Kendrick was a *bona fide* one, and he became the *boua fide* owner of them. The currency was intended to be used in payment on a contract for iron for the road.

Mr. Myers came to witness to ascertain if Kendrick was the *bona fide* owner of the bonds, and witness informed him that Kendrick was. Myers purchased his bonds of Kendrick. The Court will see by the opinion of Judge Drummond, reviewing all the testimony in relation to the bonds of my clients, that there was no testimony offered by the appellant, tending to impeach their *bona fide* purchase for value, or their ownership.

The points presented by the exceptions to the Master's report are unsustained by any evidence, and, consequently, the cases cited being based upon evidence raising and presenting the questions decided in those cases—can have no application to this case, in which there is no evidence to base such questions upon.

In Murray vs. Lardner, 2 Wall. 110, it was held that bonds and coupons like these pass by delivery—and that a want of title in the vendor does not affect the title of a *bona fide* purchaser:—and that the burden of proof of bad faith lies on the assailant. The same was held in principle in Goodman vs. Simonds, 20 How. 343, and Goodman vs. Harvey, 4 Adolph and Ellis, 870. In 20 How. above, it was further held that possession of such negotiable paper, is evidence that the holder gave value for it; and that the burden of proof to the contrary lies upon the opposite party. See also 27 How. N. Y. Prac. R. 161. Martin vs. Somerville Water Power Co., 14 Wall. 282. City of Lexington vs. Butler. The appellant here cannot set up fraud in its own agents as a defence. 15 Wall. 355, Grand Chute vs. Winegar.

The authorities cited by appellant in relation to transfers of over-due paper, payable in installments, (4 Allen R. 562) or of over-due coupons, where the bond is not due; or of notes founded in illegality; or fraudulently put in circulation (9 Grey R. 331); have no application to this case. There is no proof of fraud—or any fact to impeach the validity of these bonds or coupons—or the *bona fides* of the appellees that I represent.

The case of Petty vs. Hannum et al., 2 Humph. 102—and all cases of that class of heavy discounts—and depreciated paper—can have no possible application to cases like the present. If the sale of R. R. bonds—by the Railroads themselves—or by holders of the bonds—at a discount, would enable the obligor to reduce the re-

covery to the amount actually paid for the bonds by the plaintiff in the suit—the Railroads of the United States, could at once wipe out, at least, one-half of their bonded debt.

This is the first instance I have known, of such a defence being made to a recovery upon coupons, bond, or to a foreclosure. It appears to my mind as too unjust and absurd to deserve serious consideration. And the more so, when set up by a third party—not an obligor—and who would, if successful—become winner of profits equal in amount to the depreciation of the bonds in the market. Establish such a principle and it would invite obligors themselves to a systematic Bearing the market, to depreciate their own obligations.

There is no allegation of fraud set up in the answer, either to the issuing of bonds or the making of the mortgage and T. D. to secure them; but it simply sets up a want of power and authority to make the mortgage and T. D. But since the failure of the enterprise, S. J. R. Wilson, who was County Judge at the time, and appointed the agent of the county (see depositions of N. A. Smith, p. 115, and Record of County Court, pp. 75-6, 91.) for the protection of its interest, and for the purpose of enabling him to give that protection more effectually—appointed also a director by the R. R. Co.—to screen himself, and to cover up his own frauds and breach of trust, and to divert attention from his own mismanagement and faithlessness—has publicly given it out, charged and circulated the report that the whole transaction was fraudulent and void, and that the bondholders were try-

ing to swindle the county out of their lands. The court will perceive that by agreement (see contract with Hersey p. 89) the appellant was to have $400,000 of the bonds for building that part of the road lying in the county. That they were delivered to Hersey as custodian (see Casey's order, p. 90; Hersey's receipt, p. 91) and afterwards, by agreement, the custody was changed from Hersey to Wilson, and by Wilson the bonds were delivered to Lewis; and afterwards disposed of by him and under his directions. (See order of court, p. 91; Wilson's receipt, p. 91; Lewis' receipt to Wilson, p. 92, and Wilson's letter to Lewis, p. 92; and Wilson's correspondence with Morris, Kendrick, Van Duzer, Davis, Hersey and Lewis, on pp. 230 to 236).

On all occasions where testimony was to be taken or affidavits made, Wilson has always been on hand as a witness, swearing to the nullity of his own acts, and blotting out his own record and denying his own agency for the county, but making himself out to be the agent of the Railroad Co.

The court will perceive by this correspondence—thrust into the record by Wilson—how the bonds belonging to the county were used and squandered by him, Van Duzer, Hersey, Davis and Lewis—for their own private use—and this, too, against the earnest remonstrances of Kendrick and Hersey. The court will perceive by these letters that Wilson not only kept a team and mistress in New York City, (see Van Duzer letter, p. 236) but that he was purchasing reapers and goods which he shipped to Fairfield and opened a store, (see Bonham's

deposition, p. 283; Forth's deposition, p. 288) and mak- arrangements for the purpose of purchasing and shipping wheat, &c. (See Van Duzer's letter, p. 231, and Hersey's letter, p. 232, and Kendrick's letters, pp. 234–35).

The court were well satisfied that the county had been defrauded out of the bonds or the proceeds of them: but were equally as well convinced that it was committed by its own agents—for which the bondholders were in no way accountable.

No one can doubt Wilson's power to have preserved the county's share of these bonds; nor can any one doubt (after reading the correspondence on pp. 230 to 236—especially Kendrick, pp. 231-234-5. Hersey's pp. 232-3-4—and Van Duzer's pp. 231-5-6) that he was fully warned of the waste—and knowingly and intentionally allowed it to be done by Lewis and Davis—and that he participated in—and shared the proceeds with them.

No principle of law or equity would hold a bondholder to answer for these breaches of trust, and appropriation of trust funds—unless the county can show that the bondholder participated and shared in the funds. Of this—there is no proof as to my clients.

I, therefore, with great confidence, ask an affirmance of the decree for the amounts due my clients—and of the foreclosure and sale.

There is one more point that I wish to present. The decree was for about $1,050,000,00, bearing interest since June, 1874, would make due now to the complainants for interest $173,250,00 and in all now due $1,223,250,00.

The trust deed and mortgage purport to convey about 100,000 acres, but by actual computation there is but little over 80,000 acres. The Court will find on page 99 of the record the sworn estimate of E. B. Ardery, and M. M. Wheeler, two citizens of Wayne county, long resident there and familiar with the value of the lands. Mr. Ardery makes the average not to exceed $5.00 per acre in June, 1874. Mr. Wheeler, at the same time, fixes an average not exceeding $3.00 per acre. Take the highest quantity, viz: 100,000 acres at the highest average, to-wit $5.00 per acre, and the lands would yield only $500,000,00, not half the amount due. Put the average at $10,00 per acre, double the first estimate, amounting to $1,000,000,00 and still the lands would lack nearly a quarter of a million of paying the debt—say nothing about other bonds not brought into this suit. There is no other fund. I therefore ask the Court to remand the cause to the Court below with instructions to modify the decree by striking out the provisions in the decree for a redemption from the sale.

All which is respectfully submitted.

WALTER B. SCATES,

Counsel for Appellees above.

IN THE

Supreme Court of the United States.

BOARD OF SUPERVISORS OF WAYNE COUNTY IMPLEADED WITH THE MT. VERNON RAILROAD COMPANY,

Appellant.

VS.

JOHN W. KENNICOT, JOSEPH W. WARD, ANDREW H. WARD, ET. AL.

Appellees.

BRIEF AND ARGUMENT FOR APPELLEES,

BY J. A. McCLERNAND.

H. W. Rokker's Steam Printing House, Springfield, Ill.

1877.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1876.

BOARD OF SUPERVISORS of Wayne county, impleaded with the MT. VERNON RAILROAD COMPANY, *Appellants*,

vs.

JOHN W. KENNICOTT, JOSEPH W. WARD, ANDREW H. WARD, *et all*, *Appellees*.

Appeal from the Circuit Court of the U. S., for the Southern District of Illinois.

When this case was here before (Kennicott v Supervisors, 16 Wall, 452), the Court declared the following propositions settled:

1st. If an election or other fact is required to authorize the issue of the bonds of a municipal corporation, and if the result of that election, or the existence of that fact is by law to be ascertained and declared by any judge, officer or tribunal, and that judge, officer or tribunal, on behalf of the corporation, executes or issues the bonds with a recital that the election has been

held, or that the fact exists or has taken place, this will be sufficient evidence of the fact to all *bona fide* holders of the bonds."

"2d. If there be lawful authority for the municipality to issue its bonds, the omission of formalities and ceremonies, or the existence of fraud on the part of the agents of the municipality issuing the bonds, cannot be urged against a *bona fide* holder seeking to enforce them."

"3d. There must, however, be an original authority, by statute, to the municipality to issue the bonds. Municipal corporations have not the power, except through the special authority of the legislature, to issue corporate bonds which will bind their towns; neither have they the power to sell or mortgage the lands belonging to such towns without special authority."

The Court then proceeds to show that Wayne county had the special authority from the legislature of Illinois to make and execute the mortgage sought to be foreclosed in this suit, and holds "that there was a valid power for the giving of the mortgage in question, by Wayne county."

The Court then goes on to say: "Holding that there was valid power for the giving of the mortgage in question, by the county of Wayne, under the 10th section of the Mount Vernon charter, and that there was in fact and in law a sufficient connection with other roads, we do not deem it necessary either to examine the other alleged sources of authority for the execution of the mortgage, or the alleged acts of the county in confirmation of it.

"Under the circumstances stated, we are also of the opinion that there was a sufficient submission of the question to the voters of the county, and that as against *bona fide* holders for value, the question is not an open one. It has been decided at the present term of this Court, that where a note secured by a mortgage is transformed to a *bona fide* holder for value before maturity, and a bill is filed to foreclose the mortgage, no other defences are allowed, as against the mortgage, than would be allowed were the action brought in a court of law upon the note.

"In this action to foreclose the mortgage, the case stands in this respect as it would stand had the present suit been brought directly upon the bonds, and without reference to the mortgage.

"The execution of the deed and mortgage by Wilson and Scott, the Judges of the County Court of Wayne county, and on behalf of the county, was a sufficient execution by the county."

In conclusion the Court says: "Upon the principles announced in the opening of this opinion, the plaintiffs are entitled to a judgement for the amount of the bonds held by them. If we are right in the positions taken, there was indeed no real defence to the bonds."

On the hearing of said cause after it was remanded no new evidence was adduced, sufficient in the judgment of the Court to affect the rights of the complainants, as will appear from the opinion of Judge Drummond, found in *Chicago Legal News*, *vol.* 7, *p.* 41-2, as follows:

" We have not examined the printed record in this case as it appears filed in the Supreme Court of the

United States. We have only examined the testimony taken since. Under the case as it stood in the Supreme Court, it was decided that the deeds were valid—that the mortgage which was given to secure bonds issued by the Mount Vernon Railroad Company was a valid security; and the only question therefore now before us is, whether the bonds and coupons presented by the various parties complainant, are held by them in good faith and for value received.

"Upon an interlocutory decree the case was referred to the Master, and he was directed to inquire as to the amount of these claims and the parties who held them. A supplemental report was accordingly made by the Master. To this report no exceptions are filed. It was understood, however, that the objection might be afterwards taken that these parties were not *bona fide* holders.

"There are some exceptions to the evidence which, perhaps, the court ought to decide.

"For example, as to the letters that were introduced between the parties, who formed, to a greater or less extent, 'a ring,' as it was said, by which the county of Wayne was defrauded of the proceeds of these bonds, or of the bonds themselves. I believe none of these letters are written by any of the bondholders—they are simply letters between the various persons who had some connection with the bonds, with their negotiations, their delivery or their transfer; but they are mere private letters which ought not to bind the bondholders—unless connection is shown between them and the letters themselves. I do not understand that anything

of that kind is proved, and they become, therefore, as to them, *res inter alios acta*, and by which, of course, they should not be bound.

"They are, therefore, entirely incompetent to affect any questions in this case.

"There are only a few of the claims to which it is necessary to direct our attention, to determine whether or not these bonds and coupons are in the hands of *bona fide* holders. We have come to the conclusion that all of them which have been presented are in such hands.

"In relation to the claim of Ransome & Co., boot and shoe dealers, it is said they sold goods and received bonds from Mr. Lewis in payment—Mr. Lewis being the treasurer of the railroad company. Now, the mere fact that the goods were received for the bonds, while it may be a suspicious circumstance, is not, of itself, sufficient to prevent a party being a *bona fide* holder. Mr. Lewis was the treasurer of the company; the bonds were in his hands—or might have been in his hands—for negotiation, transfer or sale. It may be that certain goods were as valuable for the construction of a railroad as money itself. For example: iron, or any of the materials which would go into the construction of the road. So any goods which could be transferred to, or used by, the operatives of the road, and which would go to them in compensation for their services which they had rendered, or might render, would be just as valuable as money. The mere fact that goods were received does not prevent the bonds being held in good faith and for value. There must be circumstances showing that

the purchaser of the bonds knew that there was a corrupt or fraudulent motive on the part of the vendor, or person transferring the bonds, in order to make him an holder in bad faith. There is nothing of the kind shown here. On the contrary, it is shown that they were the holders in good faith and for value, but that they received them in payment for goods instead of money.

"As to Mr. Myers' claim, the chief objection made to that is in consequence of facts that are contained in the original record, and upon which, we think, the Supreme Court has substantially passed, and with which we do not feel inclined to interfere. If the Supreme Court made mistakes in relation to the facts, it is only respectful on the part of this court to require the parties to go to that court to have these mistakes rectified. The Supreme Court say in effect that, on the assumption that certain principles of law stated by that court were correct, there was, in point of fact, no defence.

"It is objected that this matter was referred by an interlocutory order to the Master, and that parties who were claimants upon these bonds were required to appear before him at his office in Springfield, on or before a certain day named, and prove their claims.

"Under this interlocutory order notices were given to the opposite counsel by publication and proofs have been taken in New York, and presented before the Master in the form of depositions, proofs being taken, under the acts of Congress, and the objection is that this is not a literal compliance with the order; that these proofs ought all to have been taken personally before the Master.

"These proofs, so far as the claims are concerned, related to the bonds themselves, which were the subject of controversy and as to which the Supreme Court had decided that the security given by the county of Wayne was valid, and therefore all that need appear was that these parties having these bonds or coupons were the holders in good faith, and, we think, that they may be presented before the Master here, through either their agents or attorneys upon proof thus taken, under the acts of Congress. It is true that the order might have been more general, and might have stated that proof in relation to the *bona fide* character of the holders might be taken elsewhere; but where the bonds are presented before the Master, and there is nothing to throw suspicion upon the bonds, it is not material how they are presented. They are within the scope and spirit of the order. If they are presented by the claimants before the Master, by their agents or by their attorneys in whatsoever way that may be, and the fact that proof has been taken on notice or that petitions have been filed, fortified by affidavit, we think ought not to prevent the operation of the interlocutory order, and this independent of the seventy-seventh rule. They are in the largest sense presented before the Master, in Springfied, though proof may have been taken in New York. Now in some of the cases the bonds are produced before the Master, the holders thereof stating that they are the holders in good faith. The presumption of law is that they are the holders in good faith. These bonds have all the characteristics of negotiable instruments. When a man presents himself before the Master with such a

bond in his hand, it is a presumption of law that he is a *bona fide* holder. It was objected by counsel of the defendants that there was no proof as to the *bona fides* of these holders. If there had been any evidence introduced on their part calculated to throw suspicion upon the good faith of the holders, then it might have been proper for the court to give the defendants an opportunity of introducing evidence on that point ; for instance, in relation to the bonds presented by Mr. Crooks, who presents them to the Master, and the Master makes a supplemental report in relation to them. Now, if there was any special evidence calculated to throw suspicion upon these particular bonds then the court might have required the claimants to supplement the evidence created by the holding and presentation of the bonds, by some additional evidence. But that has not been done here. They were asked if they had any evidence on that subject, but none has been produced, and so we have to take it as a presumption of law, not met by anything to countervail it, that these parties are the holders of the bonds in good faith and for value.

"These considerations, I think, dispose of all questions that are in the case. We cannot lose sight of the fact in considering and deciding this case, that the substantial defence in this case has been considered by the Supreme Court and decided against the defendants, and that therefore the only question is an incidental question, growing out of the position of the bondholders.

"No doubt the county of Wayne has been very much wronged in this case. Gross injustice, and, if

you choose, fraud, has been practiced upon the county by its own citizens and by its own officers; but unless these bondholders can be connected with that fraud, by notice, or by some circumstance calculated to throw suspicion upon their possession of these bonds, it would be contrary to the first principles of equity and right that they should suffer for the wrong committed by the officers of Wayne county or the Railroad Company, who had the disposal of these bonds.

It may be perhaps questioned whether these municipal bonds should have ever been held to be valid, as affecting municipalities, counties, towns and other similar public bodies, on the ground that so large a number of people, and so vast an amount of property should not be affected by a wrong or a fraud practiced by the individuals who have the sale and transfer of these bonds. But that question has been foreclosed. It is not an open question now in the Federal Court. It has been universally held that municipal authorities can make and issue bonds provided they have a law authorizing it, and that the officers employed and elected by them, can negotiate them. Therefore it comes back to this, after all: that being so, these municipalities should be more careful than they have been as to the men they entrust with their funds. They should have selected honest men and not swindlers. If they have selected the latter they must stand by the consequences, just as a man must who employs an agent to do his business—if the agent commit a fraud, the person with whom he has transacted his business and who has acted in good faith, cannot be

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permitted to suffer. The person who has employed him and held him up to the world as his agent must suffer. This principle has been applied to municipalities in cases like this Therefore if it be true that the county of Wayne has been wronged in this transaction, it has been done by its own agents, and it must suffer the consequences of that breach of trust committed by them.

It has occurred as a question to us whether we should direct the sale of this property without redemption. We have come to the conclusion under the circumstances of the case that we will not do so; that we will require the property to be sold in parcels of not exceeding 160 acres each and authorize a redemption. We think this would be more just to the county and more just also to the parties who may be holders under a subsequent incumbrance, of the whole or any part of this property, and it will tend to produce a larger sum of money for the benefit of the creditors than a sale in quantity or in lump. If the plaintiffs become the purchasers, it will be incumbent on them to give something near the value of the land, in order to avail themselves of the security they have. A decree will be prepared in accordance with these principles."

The bonds were presented to the Master, and each holder by himself or other credible person, deposed that they were the construction bonds of the Mt Vernon Railroad Company, and that they were holders thereof for value as purchasers in good faith. They are in form, numbers, amount and language, the same as the form thereof contained in the mortgage executed by Wayne

county (see page 53 of Printed Record), and they are impressed with the corporate seal of the Mt. Vernon Railway Company, itself importing verity. They are therefore, in the absence of any evidence impeaching them as counterfeit or spurious, to be taken as the genuine bonds, secured by said mortgage and trust deed.

Appellee, W. R. Hodges, testifies that he purchased the bonds held by him for about the full face of the bonds, paying the money therefor, and that none of the interest warrants were overdue (see his testimony, Printed Record, p. 145), while the evidence shows that some interest warrants were overdue when other appellees became purchasers of bonds.

The fact, however, that interest was overdue at the time of purchase does not affect the purchaser, with notice of defects in title.

Bass v. Hewitt, 15 *Wis.*, 260.

But the evidence fails to show that the bonds were improperly issued and sold, or that any equities intervened in favor of Wayne county as against appellees,

J. A. McCLERNAND,
for Appellees.

J. A. McClernand
of Counsel

M. B. KENNY, PRINTER, COR. CLARK AND MADISON STS.

IN THE

Supreme Court,

OF THE

UNITED STATES.

SUPERVISORS OF WAYNE COUNTY, IMPLEADED, ETC., *Appellants.*

vs.

JOHN W. KENNICOTT, ET ALS., *Appellees.*

Appeal from the CIRCUIT COURT of the UNITED for the Southern District of Illinois.

BRIEF FOR THOMAS UPHAM,
Executor of William P. Emerson and sundry others of the Appellees.

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I.

The principal question involved has been heretofore adjudged and determined by this Court, (16 Wall, 452.) and is no longer an open one, here or elsewhere.

Ex Parte Sibbald, 12 Pet. 488.
The Santa Maria, 10 Wheat. 431.
Browder vs. Rose, 5 Cr. 313.
Himely vs. Doe, ex dem, 4 Blackf. 489.
Gelston vs. Codwise, 1 Johns Chy. 189.
Chambers, adm. vs. Smith, adm., 30 Mo. 158
Roberts vs. Cooper, 20 How., 480.
Yates vs Smith, 40 Cal., 666.

II.

But even if the principal question had not been thus adjudged in this same case, it has nevertheless been so firmly settled by this Court in other cases, as to be no longer debatable.

Town of Coloma vs. Eaves, 2d Otto, 484.
Marcy vs. Oswego, ib., 642.
Venice vs Murdock, ib., 494.
Humboldt vs Long, ib., 642.
James et al vs. Milwaukee, 16 Wall.
Knox Co. vs Aspinwall, 21 How, 539.

III.

The proceedings which may now be reviewed in this Court relate solely to the *bona fides* of the bondholders who were let into the case subsequently to the former adjudication by this court; and peradventure, to the *bona fides* of the original bondholders likewise.

Upon this subject, no circumstance of suspicion worthy of judicial notice is alleged; the bonds are in the hands of their respective owners by purchase, openly and above board, for value; they were neither stolen or obtained fraudulently; and hence no proof of *bona fides* is needed, save and except the possession of the bonds themselves.

The law on this subject is tersely stated by Judge Drummond in his decision, in the court below. (6th Biss. 138.)

"The presumption of law is that they are holders in good "faith These bonds have all the characteristics of negoti-"able instruments. When a man presents himself before the "Master with such a bond in his hand it is a presumption of "law that he is a *bona fide* holder.

See also:

Keeny vs. Chilis, 4 Greene, 416.
Bank vs Rome, 19 N. Y. 20.
Brainerd vs. R. Rd. 25 N. Y. 496.
Birdsall vs. Russell, 29 N. Y. 220.
Gould vs. Venice, 29 Barb. 452.
Illinois vs. Dalefield, 8 Paige, 527.
White vs. R. R. 21 How. 525.

IV.

The proof of *mala fides* in the acquisition of the bonds by the bondholders in the suit, consists mainly in the expert evidence of several persons who state that they were severally then (1874), engaged in selling municipal bonds; that in their several opinions, these bonds were improperly issued and that they were then worthless in the New York market.

But whatever force (if any) there may be in these opinions, is overcome by the opinion of this court, (16 Wall 452). that the bonds *were* properly issued; also by the fact that these bonds were bought many years before; and that upon the assurances of Mr. Seymour, the trustee, who was then cashier of the Bank of North America, that "the bonds were good" and "that the bonds were amply secured," &c. (Record p. 305.)

Not only so, but the most of these bonds were bought in Boston, and not in New York: there, they had a considerable commercial value, as is evidenced by the fact that Mr. Cyrus Wakefield, one of the leading ship-owners and importers of Boston, bought $50,000 of them, and paid "several thousand dollars in cash and other personal securities for them." Record p. 308.

V.

Bad Faith in the acquisition of negotiable bonds, * * "implies guilty knowledge or wilful ignorance and the "burden of proof lies on the assailant of the title."

Hotchkiss vs. National Banks, 21 Wall. 354.

The purchaser of a bond or other negotiable instrument in open market and in the usual course of business is not bound to make a critical examination to escape the imputation of bad faith in the purchase.

Birdsall vs. Russell 29 N. Y. 220.

VI.

This Record presents substantially no stronger case than when the case was previously before the court; and the language of the court then is quite as applicable now: * * "the plaintiffs are entitled to a judgment for the amount of "the bonds held by them. If we are right in the positions "taken, there was indeed no real defence to the "bonds."

HENRY C. WHITNEY,
Solicitor for Thomas Upham and others, Appellees.

E. A. Goodwin
of Counsel

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

THE BOARD OF SUPERVISORS OF Wayne County, impleaded with the Mount Vernon Railroad Company,
Appellants,

vs.

JOHN W. KENNICOTT, JOSEPH W. WARD, ANDREW H. WARD *et al.*,
Appellees.

No. 255.

Brief and Points for Appellees, Hosea Berdsall, Lucius F. Reed, Clark. L. Potter, Joseph Waxelbaum, James O. Faircloth, Caleb Underhill, James S. Hendrickson, Oliver D. Taylor, Benjamin Wise, James F. Hendrickson, Thompson E. F. Randolph, and William C. Potter.

STATEMENT.

(The facts, so far as they relate to the case generally, will be found fully stated in the brief or arguments submitted by either my brothers Goodwin or Judge Scates, and to which I beg leave, most respectfully, to refer.)

The connection of the appellees above named with this action dates from the entry of the interlocutory decree therein, February 17th, 1874 (folio 227, p. 194, Transcript Record), and fully appears from the several matters contained in the report of Jno. A. Jones, Esq., the master to whom it was referred by the terms of said decree to take proofs, &c., as therein directed (Transcript Record, folios 343 to 400, pp. 242-261, inclusive).

The proofs had upon the previous trial, and upon the trial leading to the decree from which this appeal is taken, were made applicable to the bonds, &c., presented by these appellees.

The affirmative proof on the part of the appellees herein represented was on the facts stated in the several petitions and the production of the bonds and coupons referred to therein (Transcript, folios 343 to 400, pp. 242-261).

The exceptions of appellants to the sufficiency of proofs, &c., are found at folios 397 to 400 Transcript Record.

These exceptions did not raise any question as to the due and proper execution of such bonds or coupons.

Upon the hearing of the cause at circuit the exceptions so taken as to the proofs, &c., as to such appellees were overruled and the master's report as to bonds and coupons held by them confirmed. They were admitted parties to the record, and the amount of such bonds and coupons included in the final decree and directed to be paid out of the proceeds of the sale therein directed.

The questions presented for review, so far as they affect the said appellees, are covered by the foregoing *resumé* and citations—except in so far as the proofs entire or any part of the appellant present the question of whether, by such proofs, the burthen was shifted to the appellees to show by proofs competent for that purpose the acquisition of said bonds and coupons by them in due course before maturity, dishonor—for value, and in good faith.

It is submitted that the presumption, unless the burthen is so charged to the appellants, was to the effect (the bonds being negotiable), and in the possession of the appellees:

1. That they were the owners.

2. That they became such owners before the maturity of the bonds; and

3. That such ownership was *bona fide*, and for value.

There was nothing in the evidence presented on the hearing warranting the court in holding that any fact had been established changing the effect of these legal presumptions, or, in other words, requiring the appellees to present proofs in place of such presumptions; on the contrary the appellees then, and now, insist that such presumptions prevail—and it was so held at the circuit.

It will be seen by an examination of the exceptions in the several cases of these appellees before referred to that it is claimed that the burthen was thrown upon them, because, as is alleged, the proofs show "that all said bonds and coupons were "originally fraudulently issued, and the said persons, and each "of them, have not shown nor accounted for the possession of "them, or either of them, to have been acquired in good faith "and for value" (exception 5th).

The eighth exception abandons this theory and insists that the bonds as presented and proved, not being in accordance with the direct terms of the interlocutory decree, deprived the appellants of the opportunity to examine the said appellees "as to the facts connected with their said several holdings of "said bonds and their acquisition of the same, and in full," and said bonds should therefore be rejected and disallowed.

If it is held by this court that no proofs were submitted on the part of the appellants upon the trial overcoming the presumptions above suggested, then it is submitted that none of the exceptions cited were well taken, and the decree of the Circuit Court, overruling such exceptions, confirming the report of the master in the several cases herein presented, and including such cases in the final decree, was substantially just to all parties, and so much of said decree as relates to such cases should be affirmed.

The principal questions involved in this action *i. e.* preceding the interlocutory decree, was disposed of by this court when the

case was before the court on the appeal of the present appellees (16 Wallace, 452).

That is to say, the previous decision of this action having been based upon the facts as they now appear of record, has foreclosed all questions affecting the mortgage given to secure the bonds in controversy, and established its validity as a security for *all bonds transferred to a bona fide holder for value.*

That decision also disposes of the question sought to be readjudicated by this appeal, but in a different form; that is to say: "that no other or further defenses are allowed as against "the mortgage than would be allowed were the action brought "in a court of law upon the bonds;" and also affirms that the bonds were issued by lawful authority, "and that the omission "of *formalities and ceremonies*, or *the existence of fraud* on "the part of the *agents of the municipality* issuing the bonds, "cannot be urged against a *bona fide* holder seeking to enforce "them" (opinion of Hunt, J., pp. 464–5). And that as to the bonds included in the action as then presented, the learned justice who delivered the opinion observes (p. 471): "If we are "right in the position taken there was indeed no real defence "to the bonds."

The following propositions are believed to be correct, sustained by authority, and decisive of every question involved in this appeal affecting the appellees above named:

I.

The possession of the bonds raises the presumption that the possessor acquired them, before maturity, *bona fide* and for value.

And this presumption holds good until some fact is established dissolving the presumption and throwing upon the holder the *onus probandi.* (1 Denio 363, 3 John, Cas. 52–59; 6 Hill, 338; 8 Wend., 606: 5 Mass., 399; 7 Paige, 611, 629.)

II.

The transfer of one of these negotiable bonds before its maturity also raises the presumption of a want of notice of any defence to it, and this presumption stands until it is overcome by sufficient proof. (Carpenter *v.* Langan, 16 Wallace, 271.)

III.

That when such a *bond* is accompanied by a mortgage given at the same time to secure the payment of it, and the mortgage is subsequently, but before the maturity of the *bond*, transferred *bona fide* for value with the *bond*, the holder of the *bond*, when obliged to resort to the mortgage, is unaffected by any equities arising between the mortgagor and mortgagee subsequent to the transfer, and of which he, the assignee, had no notice at the time the transfer was made. He takes the mortgage as he did the *bond*. (Carpenter *v.* Langan (above cited), affirmed in Kennicott *v.* The Supervisors, 16 Wallace, 452, and *é converso*.)

The application of these principles require a further reference to the evidence, which will be found wholly directed to an attempt to show fraud or misconduct on the part of the officers of the county or their agents in disposing of the bonds in the first instance, and this is the burthen of the proofs taken in addition to the proofs taken before this court on the former hearing. And, in fact, such proofs as were taken on the last hearing of the case are merely *cumulative*, and do not materially change the case as now presented from that when the same was before this court on the appeal of the present appellees.

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Of Counsel for Appellees,
above named.